

No. 12563

United States
Court of Appeals
for the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

MOULTON & POWELL and J. K. CHEADLE,
Appellees.

MOULTON & POWELL and J. K. CHEADLE,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

FILED

Appeal from the United States District Court
Eastern District of Washington *OCT 30 1950*
Southern Division

PAUL B. O'BRIEN

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

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Attorney for Petitioner and Appellant.

MOULTON & POWELL,

P. O. Box 125, Kennewick, Wash., and

J. K. CHEADLE,

Old National Bank Buildng, Spokane, Wash.,

Attorneys for Defendant and Appellee.

In the District Court of the United States for the
Eastern District of Washington, Southern
Division

No. 128-99

UNITED STATES OF AMERICA,

Petitioner,

vs.

CLEMENTS P. ALBERTS, et al., and PRIEST
RAPIDS IRRIGATION DISTRICT, a Mu-
nicipal Corporation of the State of Washington,

Defendants.

PETITION FOR PAYMENT OF
ATTORNEYS' FEE

Come now Moulton & Powell and J. K. Cheadle,
attorneys for the Priest Rapids Irrigation District
in the above-entitled cause, and show and petition to
this Court as follows:

I.

Petitioners were employed by the Priest Rapids
Irrigation District to represent said district as its
attorneys in the above-entitled cause, by contract
dated August 30, 1946, a copy of which contract is
attached hereto as Exhibit "A" and is herein incor-
porated by reference.

II.

Petitioners have performed said contract by representing said district in said cause in this Court and in the Court of Appeals for the Ninth Circuit; and the disposition of said cause by the Court of Appeals has become final.

III.

In accordance with the disposition of said cause upon appeal, a modified judgment against the Government in the sum of \$302,856, together with interest, has been entered in this Court in said cause.

IV.

The amount of the attorneys' fee, together with interest, due and payable to petitioners in accordance with said contract, has been determined by petitioners and the officers of said district to be the sum of \$78,918.85. Said determination, and the approval of said district of said determination, and the consent of said district to the payment herein petitioned for, are set forth in a resolution of the board of directors of said district, a copy of which resolution is attached hereto as Exhibit "B" and is herein incorporated by reference.

Wherefore, petitioners pray that this Court enter an order directing the Clerk of this Court to pay to Moulton & Powell and J. K. Cheadle the sum of \$78,918.85 from the sum paid or to be paid into the

registry of this Court in the above-entitled cause,
Docket 128-99.

Dated this 19th day of November, 1949.

MOULTON & POWELL,

By /s/ CHARLES L. POWELL,

/s/ J. K. CHEADLE,

Petitioners.

Copy of the above petition received this 21st day
of November, 1949.

/s/ BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

Exhibit "A"

This Agreement made and entered into this
day of 1946, by and between Priest
Rapids Irrigation District, hereinafter designated
"District," and Moulton & Powell and J. K. Cheadle,
hereinafter designated "Attorneys," Witnesseth:

Whereas, an action is now pending in the United
States District Court for the Eastern District of
Washington, Southern Division, involving condem-
nation of property of the District, and Moulton &
Powell have been heretofore employed to protect the
interests of the District, and certain payments have
been made to them under said contract; and whereas
it has developed that said litigation is much more
involved and the likelihood of appeal is much
greater than initially contemplated;

Now, Therefore, it is hereby mutually understood
and agreed that the District does hereby employ the

Attorneys to represent it in the above-described action and that the Attorneys will give their best efforts and all time necessary to the proper preparation and presentation of the case in behalf of the District.

The Attorneys acknowledge and accept the sums heretofore paid to them in cash in the sum of \$..... as the only retainer or certain fee. In addition to said cash retainer or certain fee, the District will pay to the Attorneys a contingent fee based upon percentages of the amounts by which the condemnation award exceeds \$169,850.00 (the amount of the District's bonded indebtedness paid with money deposited by the Government in court in said condemnation case). Said percentages shall be as follows:

30% of the first \$100,000.00

in excess of \$169,850.00

20% of the second \$100,000.00

in excess of \$169,850.00

10% of the third \$100,000.00

in excess of \$169,850.00

5% of all additional amounts

in excess of \$169,850.00

It is understood and agreed that in the event the condemnation award does not exceed \$169,850.00, then no fee in addition to said cash retainer or certain fee will be paid to the Attorneys.

The District agrees to pay all of the costs necessary in the proper presentation of said case for trial

and on all appeals and will furnish all necessary information to the Attorneys on request.

The Attorneys agree that, before any computation of the additional, contingent fee shall be made, there shall first be deducted from the award and reimbursed to the District the amount paid by the District as costs. The Attorneys also agree that they will allow as a credit upon any additional, contingent fee to be paid to the Attorneys the sum of \$..... heretofore paid as the cash retainer or certain fee.

This agreement shall not be binding upon the directors of the District personally in any manner, in the event the Court should hold that they as directors are not authorized to make it.

This contract shall supersede the contract heretofore made between the District and Moulton & Powell.

Dated this 30th day of August, 1946.

PRIEST RAPIDS
IRRIGATION DISTRICT,

By /s/ B. SALVINI,
President.

[Seal] /s/ R. S. REIERSON,
Secretary.

MOULTON & POWELL,

By /s/ CHARLES L. POWELL,
/s/ J. K. CHEADLE.

Exhibit "B"

Resolution of the Board of Directors of the Priest
Rapids Irrigation District Regarding Payment
of Attorneys' Fee to Moulton & Powell and J. K.
Cheadle

Whereas, the Priest Rapids Irrigation District by its Board of Directors entered into a contract with Moulton & Powell and J. K. Cheadle on the 30th day of August, 1946, employing said attorneys to represent said District in the condemnation action of the United States of America v. Alberts, Priest Rapids Irrigation District, et al., No. 128-99, in the United States District Court for the Eastern District of Washington; and

Whereas, said attorneys have performed said contract by representing said District in said cause in said District Court and in the Court of Appeals for the Ninth Circuit; and

Whereas, following disposition of said cause by the Court of Appeals neither party petitioned for review by the Supreme Court of the United States; and the disposition of said cause by the Court of Appeals thus became final; and

Whereas, in accordance with said contract with said attorneys, it has been determined by the Board of Directors of said District that the expenses incurred by said District as expenses and costs in the defense of said action amount to \$6,805, that said sum deducted from the condemnation award of \$302,856 leaves a balance of \$296,051.00 as the basis for computation of the fee in accordance with said

contract; and that said fee thus computed, less the credit of \$2,000.00 allowed for the cash retainer or certain fee heretofore paid, together with interest at the rate of 6% per annum allowed in the condemnation judgment and computed for the purposes of said contract from October 1, 1943, to December 1, 1949, amounts to \$78,918.85.

Now, Therefore, Be It Resolved that said determination and said computation of said fee due and payable said attorneys under said contract in the sum of \$78,918.85 be and hereby is approved and that consent of said District be and hereby is given to payment of said sum of \$78,918.85 to said attorneys by the Clerk of said District Court from the sum paid or to be paid into the registry of said Court in said cause, Docket No. 128-99.

Passed by the Board of Directors of the Priest Rapids Irrigation District this 19th day of November, 1949.

/s/ B. SALVINI,
President and Director.

/s/ J. H. EVETT,
Director.

Attest:

[Seal]: /s/ R. S. REIERSON,
Secretary.

[Endorsed]: Filed November 21, 1949.

In the District Court of the United States for the
Eastern District of Washington, Southern
Division

No. 128-99

UNITED STATES OF AMERICA,

Petitioner,

vs.

CLEMENTS P. ALBERTS, et al., and PRIEST
RAPIDS IRRIGATION DISTRICT, a Mu-
nicipal Corporation of the State of Washington,
Defendants.

MODIFIED JUDGMENT

The above-entitled action having come on for trial before the undersigned Judge of the above-entitled Court on February 10, 1947, the petitioner, United States of America, being represented by Bernard H. Ramsey, Special Assistant to the Attorney General, and June Fowles, Special Attorney, Department of Justice, and the defendant, Priest Rapids Irrigation District, appearing by Charles L. Powell and J. K. Cheadle, its attorneys, and no other parties appearing in the trial of said action, and a jury having been duly impaneled and sworn to determine the just compensation to be paid for the taking of the property, condemned, and having under order of the Court viewed the property, witnesses having been sworn, and testimony having been taken, and the jury having been instructed to return its general verdict determining the value of the power properties of the Priest Rapids Irriga-

tion District, less the portion of the value thereof which the jury found was required for irrigation purposes, and pursuant to said instruction the jury having returned its general verdict in the sum of \$473,356.00 as being the value so determined as of October 1, 1943, and the Court having instructed the jury to answer a special interrogatory determining the value of the irrigation properties, including that portion of the value of the power properties found to be required for irrigation purposes, and the jury having returned an answer to said special interrogatory determining the value of said irrigation properties to be \$365,845.00 as of April 1, 1943, and

It further appearing to the Court that there has been deposited in the registry of the above-entitled Court the amount of estimated just compensation for the taking of the property hereinafter described, the sum of \$170,500.00, which said sum was deposited on May 12, 1944, and

The Court being duly and fully advised in the law and in the premises, and having before it the mandate of the United States Court of Appeals for the Ninth Circuit, received by this Court upon disposition of the above-entitled action on appeal,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the verdict of the jury finding and determining the just compensation in the sum above set forth for the power properties of the Priest Rapids Irrigation District be and the same is hereby confirmed and approved;

It Is Further Ordered, Adjudged and Decreed that the total amount of compensation, including the full and fair market value of the power properties, less that portion of the value thereof devoted to irrigation, as of the date of taking, to wit: October 1, 1943, and the full sum of all damages resulting to the persons and parties interested therein by reason of the taking and appropriation by the United States of America of the hereinafter described interests of said properties, and just compensation for the taking thereof is the sum of \$473,356.00, being the sum fixed by the verdict of the jury as hereinabove set forth for the condemned interest in said power properties; and

It Is Further Ordered, Adjudged and Decreed that the value of the irrigation properties of the Priest Rapids Irrigation District, as of April 1, 1943, was the sum of \$365.845.00, and that there shall be no compensation paid to the Priest Rapids Irrigation District for the taking of said irrigation properties; and

It Is Further Ordered, Adjudged and Decreed that there be and hereby is vested in the United States of America, petitioner herein, the full fee simple title in and to the following-described properties.

Subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, and also subject to all easements and rights of whatever nature, owned by the Washington Irrigation and Development Company in and as to the lands hereinafter described as Par-

cel PR-1; and to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines in and as to the lands hereinafter described as Parcel PR-3; To Wit:

Parcel PR-1—Tract No. W-2004

Parcel A:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W.M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is 986½ feet West of the quarter section corner on the North boundary of said section; thence East along said North boundary line of said section to the West Bank of the Columbia River; thence in a Southeast direction along said West Bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning.

Parcel B:

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section 2, Township thirteen (13) North, Range twenty-three (23) East, W.M.

Parcel C:

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W.M., except a right of

way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington.

Parcel D:

Lots three (3) and four (4), second class shore-lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East W.M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's File No. 41775, records of Yakima County, Washington.

and also:

Together with all rights of the Priest Rapids Irrigation District, a Washington corporation, to construct and maintain wing dams for power canal for water plant in Columbia River at Priest Rapids, which is immediately adjacent to the lands above described, and also including the right to divert the water of the Columbia River at Priest Rapids for the purpose of developing power upon the lands above described, and also all of those certain head-gates, headworks, wing dams, embankments, concrete power house, wing walls, gates and draft tubes located upon, appurtenant to or used in connection with the above-described lands, together with all water rights appurtenant thereto or used

in connection with the lands heretofore described.
All in Yakima County, Washington.

Parcel PR-2

All presently existing easements and/or rights of the Priest Rapids Irrigation District, a Washington corporation, for the construction, operation, maintenance and patrol of an electric power transmission line running from its power house site located in Parcel PR-1, to its pumping station site located in Parcel PR-3, including all poles, wires and appurtenances. The approximate location of said transmission line is as follows:

That certain 66,000 volt transmission line known as "The Hanford-Priest Rapids Line," including poles, wires, insulators, cross arms, guys, props and hardware, and beginning at the power house located on the land described in Parcel PR-1 in Section 2, Township 13 North, Range 23 East, W.M.; and extending in a Southeasterly direction through Sections 2, 11 and 12, Township 13 North, Range 23 East, W.M., to the Southeast corner of Section 12, Township 13 North, Range 23 East, W.M.; and then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 24 East, W.M.; then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 25 East, W.M.;

Also that certain branch line known as the: "Coyote Stub Line," beginning at a point on the main 66,000-volt Hanford-Priest Rapids Line at the

Northeast corner of Section 13, Township 13 North, Range 25 East, W.M., and extending in a Northerly direction along the East line of Sections 12 and 1, Township 13 North, Range 26 East, W. M.; to the Coyote Pumping Station formerly owned by the Hanford Irrigation & Power Company, and which is located upon land hereinafter described in Parcel PR-3 as Tract No. G-452. All in Yakima and Benton Counties, Washington.

Parcel PR-3—Tract No. G-452

Government Lot Four (4), Section six (6), Township thirteen (13) North, Range twenty-six (26) East, W.M., together with second class shorelands adjoining, in Benton County, Washington, containing 16.72 acres, more or less.

Parcel PR-4

All water rights and appropriations of water from the Columbia River made or owned by the Priest Rapids Irrigation District, a Washington corporation.

Parcel PR-5

All right, title or interest of the Priest Rapids Irrigation District, a Washington corporation, in and to the following described lands, including all canals, ditches, laterals pipe lines, easements, rights of way and appurtenances owned by said Priest Rapids Irrigation District:

Beginning at the Southwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26

East, W.M.; thence East along South line of Lot 4 to its Southeast corner; thence North along the East line of said Lot 4 to the Southerly right-of-way line of the Priest Rapids Irrigation District canal right-of-way; thence along said canal right-of-way line through Section 6 in said Township and Range; Sections 31, 32, 33, 34, 27, 26, 25, and 36 in Township 14 North, Range 26 East, W.M.; Section 1, Township 13 North, Range 26 East, W.M.; Sections 6, 7, 8, 17, 16, 21, 28, 27, 26, 35, and 36 in Township 13 North, Range 27 East, W.M.; Section 31, Township 13 North, Range 28 East, W.M.; Sections 6 and 5 in Township 12 North, Range 28 East, W.M., to the right bank of the Columbia River, thence Northwesterly, Northerly, Westerly and Southwesterly up the right bank of said Columbia River to the Northwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W.M., thence South along the West line of said Lot 4 to the point of beginning, together with second class shorelands adjoining Lot 4 in Section 6, Township 13 North, Range 26 East, W.M., in Benton County, Washington.

also:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W.M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is 986 $\frac{1}{2}$ feet

West of the quarter section corner of the North boundary of said section; thence East along said North boundary line of said section to the West bank of the Columbia River; thence in a Southeast direction along said West bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning; and also,

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section two (2), Township thirteen (13) North, Range twenty-three (23) East, W.M.; and also,

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W.M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington; and also,

Lots three (3) and four (4), second class shorelands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W.M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by

deed recorded in volume 136 of Deds, Page 418, under Auditor's file No. 41775, records of Yakima County, Washington. All in Yakima County, Washington.

It Is Further Ordered, Adjudged and Decreed that the only person having an interest in and to the compensation above fixed is the Priest Rapids Irrigation District, a public corporation, and that there be and hereby is entered against the petitioner, the United States of America, and in favor of the defendant Priest Rapids Irrigation District, a judgment for the difference between \$473,356.00 and \$170,500.00, which judgment shall bear interest at the rate of 6% per annum on \$473,356.00 from October 1, 1943, until May 12, 1944, and at the rate of 6% per annum on \$302,856.00 from May 12, 1944, until paid, and

It Is Further Ordered, Adjudged and Decreed that said deficiency judgment of \$302,856.00, together with interest as above ordered, and the whole thereof, shall be paid into this Court and remain subject to the orders of this Court until such time as this Court shall order the payment of the balance of the same to the Superior Court of the State of Washington, in and for Benton County, for the use and benefit of the Priest Rapids Irrigation District in liquidation proceedings to be maintained in said Superior Court, and

It Is Further Ordered, Adjudged and Decreed that title to the hereinabove described interests in the above-described properties be and the same is hereby vested in the United States of America, petitioner

herein, as to the irrigation properties as of April 1, 1943, and as to the power properties as of October 1, 1943, which said title is free and clear of any and all charges, interests, claims, taxes, liens and encumbrances of any kind or character whatsoever.

Done by the Court this 21st day of November, 1949.

/s/ **SAM M. DRIVER,**

United States District Judge.

Presented by:

/s/ **J. K. CHEADLE,**

Of Attorneys for Defendant Priest Rapids Irrigation District.

Approved as to Form:

/s/ **BERNARD H. RAMSEY,**

Special Assistant to the
Attorney General.

[Endorsed]: Filed November 21, 1949.

[Title of District Court and Cause.]

**PETITION FOR PAYMENT OF
CERTIFICATES OF INDEBTEDNESS**

Comes now Patrick Clarke and respectfully petitions the above-entitled Court and shows:

I.

That petitioner is a resident of Grandview, Yak-

ima County, Washington, and a citizen of the United States of America.

II.

That on or about February 10, 1947, there was entered in the Superior Court of the State of Washington, in and for Benton County, in Wright, et al., v. Chapman, et al., No. 8035, an order authorizing the issuance of certificates of indebtedness by the Directors of Priest Rapids Irrigation District, a copy of which order is attached hereto marked Exhibit "A" and made a part hereof the same as if set forth at length herein.

III.

That pursuant to said order certificates of indebtedness were issued by the Priest Rapids Irrigation District, were signed by the President and Secretary of said District and were by said District delivered to your petitioner.

IV.

That a true and correct copy of one of the certificates of indebtedness issued by said Board and delivered to your petitioner is attached hereto marked Exhibit "B," and made a part hereof, the same as if set forth at length herein, and that eight in all of said certificates were issued and delivered to your petitioner and now are in his possession, and have not been transferred in any manner, and your petitioner has paid, pursuant to said order and pursuant to the delivery of said certificates, to the said Board the total sum of \$6,000.00 in cash.

V.

That during the month of February, 1947, the above-entitled action was tried and resulted in a verdict in favor of the Priest Rapids Irrigation District. That said decision was appealed, and the Court of Appeals for the Ninth Circuit modified the judgment of the United States District Court, Eastern District of Washington, Southern Division, and held that judgment against the Government in the amount of \$302,856 should be entered.

VI.

That pursuant to said certificates of indebtedness and the terms thereof, and in accordance with the aforesaid order of the Superior Court of the State of Washington, in and for Benton County, payment of the certificates of indebtedness, numbered one to eight inclusive, in the sum of \$1,000.00 each, should be ordered from the funds paid into the registry of the above-entitled Court by the petitioner United States of America, and that said payment should be in the sum of \$8,000.00, with interest at the rate of 4% per annum from February 17, 1947, until paid.

VII.

That your petitioner is informed and believes, and therefore alleges the fact to be that said sum of \$6,000.00 paid by petitioner to said district for said certificates was used by said district for the purpose of financing the litigation in behalf of said district in this Court and in the Court of Appeals for the

Ninth Circuit, and that said certificates, together with interest, are a just and proper charge against the condemnation award or judgment in the above-entitled cause.

VIII.

That the Board of Directors of the Priest Rapids Irrigation District has passed a resolution approving and consenting to the payment prayed for herein by your petitioner, a copy of which resolution is attached hereto marked Exhibit "C" and made a part hereof the same as if set forth at length herein.

Wherefore, petitioner prays that an order be entered granting this petition and ordering and directing the Clerk of the United States District Court, for the Eastern District of Washington, Southern Division, to pay to your petitioner from the monies paid or to be paid into the registry of the above-entitled Court the sum of \$8,000.00, with interest thereon at the rate of 4% per annum from February 17, 1947, until paid, said payment to be upon the surrender for cancellation of the eight certificates of indebtedness now held by your petitioner.

/s/ PATRICK CLARKE,
Petitioner.

State of Washington,

County of Yakima—ss.

Patrick Clarke, being first duly sworn, on oath

deposes and says: That he is the petitioner above named, that he has read the above and forgoeing petition, knows the contents thereof and believes the same to be true.

/s/ PATRICK CLARKE.

Subscribed and sworn to before me this 19th day of November, 1949.

[Seal]: /s/ CHARLES L. POWELL,
Notary Public in and for the State of Washington,
Residing at Kennewick.

Exhibit "A"

In the Superior Court of the State of Washington
In and for Benton County

No. 8035

C. I. WRIGHT and MAMIE WRIGHT, Husband
and Wife, B. SALVINI, J. H. EVETT, and
PRIEST RAPIDS IRRIGATION DIS-
TRICT, a Municipal Corporation of the State
of Washington,

Plaintiffs,

vs.

HARLEY E. CHAPMAN, County Auditor of Ben-
ton County, Washington, and C. W. NESSLY,
County Treasurer of Benton County, Wash-
ton,

Defendants.

**ORDER AUTHORIZING ISSUANCE OF
CERTIFICATE OF INDEBTEDNESS**

This Matter having come on regularly in its order to be heard on the petition of Priest Rapids Irrigation District for an order requesting direction as to the method of the payment of expenses of said district in the condemnation action described in the petition herein, and said hearing having been held in accordance with due notice given to the defendants in the above-entitled cause and to Bernard H. Ramsey, attorney for the United States of America, and it appearing to the Court from the records and files herein that a decree was entered on or about August 1, 1946, retaining jurisdiction of this cause for appropriate supervision of the administration of said irrigation district, and at the hearing of said petition it having been shown that the Priest Rapids Irrigation District has less than \$1,000.00 cash on hand and that approximately \$7500.00 will be required to meet the necessary expenses of the district, exclusive of attorney fees, in the defense of said condemnation action, and it further appearing to the Court that the issuance and sale of certificates of indebtedness issued by said district is a proper method of financing said condemnation action on behalf of said district, which said certificates of indebtedness shall be paid only from such award as shall be made in the condemnation action, any unused funds to be pro rated back to the purchasers of said certificates, and it further appearing to

the Court from representations made by counsel that a sale of \$8,000.00 in certificates is now possible at a discount of twenty-five per cent, which said sale will yield \$6,000.00 to finance said litigation and that said sale is the best sale obtainable by said attorneys for the district,

Now, Therefore, It Is Hereby Ordered that the directors of Priest Rapids Irrigation District shall execute and deliver certificates of indebtedness for the purposes herein expressed, which shall bear on their face provision that the same shall bear interest at the rate of 4% per annum and shall be a first lien and charge against any award made to the Priest Rapids Irrigation District in the condemnation action for the value of the properties of said district, over and above the amount paid into Court in said condemnation action by the United States of America, and shall be payable only from such award, and not otherwise, and that said certificates of indebtedness shall be issued in the amount of \$8,000.00 and sold at a discount of twenty-five per cent, to yield a net sum of \$6,000.00, to be deposited in the office of the treasurer of Benton County, Washington, to be there disbursed on vouchers approved by the Priest Rapids Irrigation District;

It Is Further Ordered that said certificates shall be of equal rank and priority and shall be payable as herein provided, the funds received therefrom, however, to be subject to withdrawal only for the

payment of the expenses of said district in the defense of said condemnation action, and

It Is Further Ordered that the Court reserves the right to issue additional certificates of indebtedness of equal rank and priority in the event it becomes necessary to finance an appeal from said action, said certificates to be sold only after the amount and rate of discount thereof has been approved by the Court.

It Is Further Ordered that the form of certificate attached hereto be and the same is hereby approved.

Done by the Court this 10th day of February, 1947.

/s/ **TIMOTHY A. PAUL,**
Judge.

Approved as to Form Only and Notice of Presentation Waived:

/s/ **ORRIS L. HAMILTON,**
Prosecuting Attorney, Benton
County, Washington.

Exhibit "B"

**Certificate of Indebtedness
(Non-Negotiable)**

Priest Rapids Irrigation District, a public corporation, acting in accordance with the orders of the Superior Court of the State of Washington in and for Benton County, in Cause No. 8035 (to which orders reference is specifically made) is held and

firmly bound to pay to Patrick Clarke or his assigns, \$1,000.00 lawful money of the United States of America, with interest from date thereof at the rate of four per cent per annum, payable at maturity.

This certificate of indebtedness shall be payable only from an award to be made to the undersigned in that certain action now pending in the United States District Court for the Eastern District of Washington, Southern Division, entitled "United States of America, Petitioner, vs. Priest Rapids Irrigation District, a municipal corporation, et al, defendants," being Cause No. 128-99. In the event no award is made to the undersigned in excess of the bonded indebtedness as heretofore paid by the United States of America, petitioner in said action, or in the event said award cannot be made available for payment of this certificate, no liability may be asserted hereunder.

This certificate is one of a series of eight to be issued by the undersigned for the payment of the expenses of a litigation in the United States District Court for the Eastern District of Washington, Southern Division. In the event an award is made in excess of the bonded indebtedness of the District as shown by the condemnation action and said award is available for payment of this and similar certificates, the same will be paid in full and as a first and prior charge on said funds.

The undersigned will use its best efforts to see that funds are available in said condemnation action for the payment of this and other similar certificates issued. It is understood that all certificates is-

sued to finance said litigation shall be of equal rank and priority.

Dated this 17th day of February, 1947.

PRIEST RAPIDS
IRRIGATION DISTRICT,
A Public Corporation.

By /s/ B. SALVINI,
President.

Attest:

[Seal]: /s/ R. S. REIERSON,
Secretary.

Exhibit "C"

Resolution of the Board of Directors of the Priest
Rapids Irrigation District Regarding Payment
of Certificates of Indebtedness of Said District
Held by Patrick Clarke.

Whereas, the Priest Rapids Irrigation District by its Board of Directors, and pursuant to the authority of a February, 1947, order by the Superior Court of the State of Washington in and for Benton County in C. I. Wright, et al. v. Chapman, et al., No. 8035, on February 17, 1947, did issue eight certificates of indebtedness to Patrick Clarke, each for the amount of \$1000.00 and each bearing interest at the rate of 4% per annum from February 17, 1947, until paid, and did receive from Patrick Clarke \$6000.00 in cash for said certificates of \$8000.00 indebtedness, in accordance with provision for discount contained in said court order; and

Whereas, said \$6000.00 received by the Priest Rapids Irrigation District was used to meet the necessary expenses of said district, exclusive of attorneys' fee, in the defense of the condemnation action, United States of America v. Alberts, Priest Rapids Irrigation District, et al., No. 128-99, in the United States District Court for the Eastern District of Washington; and

Whereas, in said condemnation action, upon appeal, the Court of Appeals for the Ninth Circuit decided that judgment against the Government for \$302,856 should be entered in said District Court.

Now, Therefore, Be It Resolved that the Priest Rapids Irrigation District hereby approves payment of said certificates of indebtedness in the total sum of \$8000.00 together with interest at the rate of 4% per annum from February 17, 1947, until paid, and consents to such payment to Patrick Clarke by the Clerk of said District Court from the sum paid or to be paid into the registry of said Court in said cause, Docket 128-99, provided that such payment be conditional upon delivery to said Clerk by Patrick Clarke of each and all of said eight certificates of indebtedness.

Passed by the Board of Directors of the Priest Rapids Irrigation District this 19th day of November, 1949.

/s/ B. SALVINI,
President and Director.

/s/ J. H. EVETT,
Director.

Attest:

[Seal] /s/ R. S. REIERSO^N,
 Secretary.

Receipt of copy acknowledged.

[Endorsed]: Filed November 21, 1949.

[Title of District Court and Cause.]

ORDER FOR PAYMENT OF
CERTIFICATES OF INDEBTEDNESS

This matter having come on regularly and in its order to be heard upon the petition of Patrick Clarke for the payment of eight certificates of indebtedness in the total amount of \$8000.00, with interest at the rate of 4% per annum from February 17, 1947; and it appearing to the Court from the records and files herein that said certificates of indebtedness were issued by the directors of the Priest Rapids Irrigation District pursuant to an authorizing order of the Superior Court of the State of Washington in and for Benton County, and it further appearing that the directors of the Priest Rapids Irrigation District have by resolution approved, and consented to, the payment prayed for by Patrick Clarke in said petition; and the Court being duly and fully advised in the law and in the premises,

Now, Therefore, It Is Hereby Ordered that upon the delivery of said certificates of indebtedness by

Patrick Clarke and the receipt of said certificates of indebtedness by the Clerk of this Court, the Clerk of this Court is hereby ordered and directed to pay to Patrick Clarke the sum of \$8000.00, together with interest at the rate of 4% per annum from February 17, 1947, until paid, from the sum paid or to be paid into the registry of this Court in Docket 128-99; and

It Is Further Ordered that upon final payment therefor said certificates of indebtedness be and they hereby are ordered cancelled, and the Clerk of this Court is hereby ordered and directed to mark each and every one of said certificates of indebtedness with the word "paid" upon the face thereof by perforation or other plainly legible means, and to inform the secretary of the Priest Rapids Irrigation District and the Clerk of the Superior Court of the State of Washington in and for Benton County of such action, so that their records may be made to conform to such cancellation.

Done by the Court this 6th day of January, 1950.

/s/ SAM M. DRIVER,
Judge.

Approved:

/s/ BERNARD H. RAMSEY,
Of Attorneys for the United
States of America.

Presented by:

/s/ J. K. CHEADLE,
Of Attorneys for Priest
Rapids Irrigation District.

[Endorsed]: Filed January 6, 1950.

[Title of District Court and Cause.]

**ORDER FOR PAYMENT OF
ATTORNEY FEES**

This matter having come on regularly in its order to be heard upon the petition for the withdrawal of funds by the Priest Rapids Irrigation District for the payment of attorney fees to Moulton & Powell and J. K. Cheadle in the sum of \$78,918.85 from the registry of the above-entitled Court, which petition is supported by a resolution of the Priest Rapids Irrigation District board of directors approving payment of the contract attorney fees in said amount and requesting withdrawal of funds for the payment petitioned for, and it appearing to the Court from the records and files herein and from the evidence introduced that the Court has retained jurisdiction of the fund paid into the registry of the above-entitled Court in the sum of \$422,252.80 in satisfaction of the judgment entered herein, being the modified judgment entered on November 21, 1949, and that the Court has jurisdiction to enter the order for the withdrawal of said funds for the payment of attorney fees, and that the Court at the hearing on January 5 and 6, 1950, received evidence and listened to argument, and on February 27, 1950, received additional evidence, and having considered fully the records and files in this cause, the documentary evidence and oral testimony and the evidence stipulated, and having heard arguments of counsel, and the Court having concluded upon consideration of all rele-

vant matters that the sum of \$55,000.00 is appropriate and reasonable compensation for the services which have been performed by the attorneys for the Priest Rapids Irrigation District on what was necessarily a contingent basis,

Now, therefore, it is hereby ordered that the sum of \$55,000.00 shall be and the same is hereby directed to be withdrawn from the deposit of \$422,252.80 for the benefit of the Priest Rapids Irrigation District, for the payment of attorney fees for the prosecution of this action in behalf of said district, and

It is further ordered that the Clerk of the above-entitled Court be and he is hereby ordered and directed to issue and deliver check in said amount of \$55,000.00 to Moulton & Powell and J. K. Cheadle, Box 125, Kennewick, Washington.

Done by the Court this 10th day of March, 1950.

/s/ SAM M. DRIVER,
District Judge.

Approved as to form:

/s/ BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

Presented by:

/s/ CHARLES L. POWELL,
Of Attorneys for Priest
Rapids Irrigation District.

[Endorsed]: Filed March 10, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: The Priest Rapids Irrigation District, and
Moulton & Powell, and J. K. Cheadle, Its
Attorneys of Record:

You and each of you are hereby notified that the petitioner, United States of America, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the Order of the Court for payment of attorney fees entered herein on the 10th day of March, 1950, allowing the sum of Fifty-five Thousand and no/100 (\$55,000.00) Dollars as attorney fees to be paid to Moulton & Powell, Attorneys at Law, and J. K. Cheadle, Attorney at Law, from the monies paid into the registry of the District Court of the United States for the Eastern District of Washington in the above-entitled cause.

Dated this 10th day of March, 1950.

UNITED STATES OF
AMERICA,

By /s/ BERNARD H. RAMSEY,
Special Assistant to the Attorney General, of Peti-
tioner's Attorney of Record.

[Endorsed]: Filed March 10, 1950.

[Title of District Court and Cause.]

MOTION FOR STAY

Whereas the above-entitled Court did on the 10th day of March, 1950, make and enter herein an Order for Payment of Attorney Fees in the amount of Fifty-five Thousand and no/100 (\$55,000,00) Dollars from the monies on deposit in the registry of this Court in the above-entitled cause, and

Whereas the United States of America has filed herein its Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from said Order, now, therefore,

The petitioner, United States of America, acting by and through Bernard H. Ramsey, Special Assistant to the Attorney General, of its attorneys of record, by authority and at the direction of the Attorney General of the United States, does hereby move the Court for an Order herein staying the distribution and/or payment by the Clerk of this Court to Moulton & Powell and J. K. Cheadle of the sum of Fifty-five Thousand and no/100 (\$55,000.00) Dollars allowed herein by the Court as attorney fees to the said Moulton & Powell and J. K Cheadle, pending the disposition of said appeal to the United States Court of Appeals for the Ninth Circuit.

Dated this 10th day of March, 1950.

/s/ BERNARD H. RAMSEY,

Special Assistant to the Attorney General, of Petitioner's Attorneys of Record.

[Endorsed]: Filed March 10, 1950. [8]

[Title of District Court and Cause.]

ORDER FOR STAY

This matter coming on upon the motion of the petitioner, United States of America, for an Order herein staying the payment and/or distribution by the clerk of this Court to Moulton & Powell, Attorneys at Law, and J. K. Cheadle, Attorney at Law, of the sum of Fifty-five Thousand and no/100 (\$55,000.00) Dollars out of the monies on deposit in the registry of this Court in this cause as attorney fees herein, pursuant to the Order for Payment of Attorney Fees made and entered herein by the Court on the 10th day of March, 1950; and

It appearing to the Court that the petitioner, United States of America, has heretofore filed herein its Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from said Order for Payment of Attorney Fees herein entered on the 10th day of March, 1950, pending the final disposition of said appeal by the United States Court of Appeals for the Ninth Circuit; and

It appearing to the Court that said distribution and/or payment of said sum of Fifty-five Thousand and no/100 (\$55,000.00) Dollars as provided under said Order should be stayed until the final disposition of said appeal,

Now, Therefore,

It is by the Court at this time Considered, Ordered and Adjudged that the payment of said sum of Fifty-five Thousand and no/100 (\$55,000.00) Dollars allowed as attorney fees herein from the monies

now on deposit in the registry of this Court in the above-entitled cause should be and the same is hereby stayed pending the final disposition of the appeal of the United States of America from said Order to the United States Court of Appeals for the Ninth Circuit.

Dated this 10th day of March, 1950.

/s/ SAM M. DRIVER,

Judge of the District Court.

Presented by:

/s/ BERNARD H. RAMSEY,
Special Assistant to
the Attorney General.

[Endorsed]: Filed March 10, 1950.

[Title of District Court and Cause.]

NOTICE OF CROSS-APPEAL

Notice is hereby given that Moulton & Powell and J. K. Cheadle, attorneys for the Priest Rapids Irrigation District and petitioners for payment of attorneys' fees in the above-entitled action, hereby cross-appeal to the United States Court of Appeals for the Ninth Circuit from the order for payment of attorneys' fees entered in the above-entitled action on March 10, 1950.

MOULTON & POWELL and
J. K. CHEADLE,

By /s/ CHARLES L. POWELL,
Cross-Appellants.

[Endorsed]: Filed March 30, 1950.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know all men by these presents: That we, Moulton and Powell and J. K. Cheadle, attorneys for the Priest Rapids Irrigation District, as principals, cash in the amount of two hundred fifty dollars (\$250.00) having been deposited with the Clerk of the Court in lieu of surety, are held and firmly bound unto the above-named petitioner, the United States of America, in the full and just sum of two hundred fifty dollars (\$250.00) to be paid to the said petitioner, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Executed this 30th day of March, 1950.

The condition of this obligation is such that:

Whereas, on the 10th day of March, 1950, in the above-entitled action an order for payment of attorneys' fees was entered, which order provided that the sum of \$55,000.00 be withdrawn from the condemnation award of \$422,252.80 paid into court for the benefit of the Priest Rapids Irrigation District, and that said sum of \$55,000.00 be paid to Moulton & Powell and J. K. Cheadle as attorneys' fee in this condemnation action; and said Moulton & Powell and J. K. Cheadle have cross-appealed to the United States Court of Appeals for the Ninth Circuit;

Now, Therefore, if said principals shall pay the costs if said cross-appeal is dismissed or the order appealed from is affirmed, or such costs as the appellee

late court may award if said order is modified, then the above obligation to be void; otherwise in full force and effect.

/s/ MOULTON & POWELL, and

/s/ J. K. CHEADLE,

By /s/ CHARLES L. POWELL.

Receipt of copy acknowledged.

[Endorsed]: Filed March 30, 1950.

[Title of District Court and Cause.]

POINTS AND AUTHORITIES IN SUPPORT
OF PETITION FOR PAYMENT OF AT-
TORNEYS' FEE

Introduction

The petition of Moulton & Powell and J. K. Cheadle for payment of attorneys' fee was filed on November 21, 1949; and about one month later the Clerk of the Court gave formal notice that the petition was set for argument on January 5, 1950. The Government has not served any objections to the petition, nor any pleading responsive to the petition—although Government counsel informally has indicated that the Government will oppose the payment prayed for in the petition.

On November 21, 1949, the Court stated that the Court would want to have opinion evidence presented at the hearing; and in response, petitioners Moulton & Powell and J. K. Cheadle willingly and without hesitation have prepared to show to the Court at the hearing the reasonableness of the contingent fee.

However, it is submitted that the Government cannot with merit question the fee contract or the payment of the fee to which the district has consented. Reasons and authorities supporting that point follow.—Those same reasons and authorities, and others presented in the following pages, also show to the Court, in response to whatever question the Court of its own motion has raised or may raise, that the fee contract of petitioners with the Priest Rapids Irrigation District is legally proper and is reasonable.

I.

Contingent Fee Contracts, Such as That of Petitioners, Are Valid in This State of Washington, and May Be Made by a Municipal Corporation.

In the State of Washington, as regards the measure and mode of compensation of attorneys, Remington's Revised Statutes, Section 474, provides as follows:

The measure and mode of compensation of attorneys and counselors shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums by way of indemnity for his expenses in the action, which allowances are termed costs.

Section 139-15 of Remington's Revised Statutes provides that: "The code of ethics of The American Bar Association shall be the standard of ethics for the members of the bar of this state." And

Section 11 of Rule 11 For Discipline of Attorneys (193 Wash. 93-a) contains the same provision.

Rules 12 and 13 of the Code of Ethics of the American Bar Association read as follows:

12. Fixing the Amount of the Fee.

In fixing fees, lawyers should avoid charges which over-estimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5)

the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

13. Contingent Fees.

A contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case, including the risk and uncertainty of the compensation, but should always be subject to the supervision of a Court as to its reasonableness.

The case law of the Supreme Court of the State of Washington does not indicate that contingent fee contracts in this state are always subjected to the supervision of the court as to their reasonableness—although, of course, whenever a contingent fee contract is questioned in litigation between attorney and client, the contract is subjected to scrutiny by the court. Three significant Washington cases are referred to in the following paragraphs. They show that contingent fee contracts, such as the contract of petitioners, are valid and may be made by a municipal corporation.

In *Hardman v. Brown*, 153 Wash. 85, 279 Pac. 91, the assignee of one of a number of creditors for whom legal work was performed on a 50% contingent fee contract contested payment. The trial court decided against the creditor-client's assignee; and upon appeal the judgment was affirmed. One Levinson had been adjudged a bankrupt; the verified claims presented to the trustee by creditors aggregated about \$125,000.00, while the property turned over to the trustee as assets of the bankrupt was comparatively of insignificant value. It was believed that the bankrupt had hidden assets which could be uncovered and subjected to payment of his debts. However, the trustee had insufficient funds to pay costs of litigation and many of the creditors were willing to undertake the necessary litigation only upon a contingent fee basis.

The litigation was commenced upon an agreement to pay the attorneys one-third of any amounts recovered, but the legal work involved was harder than anticipated; and the fee percentage was revised upward to 50% of the amount recovered (153 Wash. 85, 89).

The creditor-client's assignee who questioned payment of the fee contended that the contract, so far as the particular creditor-client was concerned had been entered into through a misunderstanding of the situation, as regards the identity of the attorneys employed; but the court decided the case adversely to that contention. The court stated, regarding another contention of appellant, that

the contention could be made only on the theory that the attorneys' contract with the creditors was so far extortionate as to amount to a fraud. But regarding that theory the court concluded:

But in support of this theory we find nothing in the record. The contract made between the creditors and the attorneys was one permissible under the laws of this state, whatever may be the rule elsewhere, and it would seem that the mere statement of the facts is sufficient to show that it was not unconscionable.

It should be noted that, as the court stated (at p. 87) the litigation against Levinson was successful and sufficient property was discovered and brought into the bankrupt estate to pay the costs of the litigation, the face of the claims against Levinson in full, and a considerable part of the accrued interest on the claims. The value of the property recovered, therefore, apparently was in the neighborhood of \$125,000 and the amount of the 50% contingent fee in the neighborhood of \$62,500.

In *Albert v. Munter*, 136 Wash. 164, 239 Pac. 210, the plaintiff, Albert, sued Adolph Munter, et al., doing business as Munter & Munter, to recover property held under a claim of lien for attorneys' fees. Judgment for the defendants was affirmed by the Supreme Court. The property was held by Munter & Munter under a claim of lien for an attorney and solicitors' fee of \$8187.98 alleged to be due them for securing the return by the Federal Alien Property Custodian to Mr. Albert

of property of the value of about \$32,000 seized during the war. As stated by the Supreme Court (at p. 165) regarding the contingent fee contract involved and the time when it was entered into:

Respondents claimed under a contract for attorneys' fees executed by appellant to them by which it was agreed that they should receive 25% of the amount recovered. The contract was not proposed nor entered into until some time after the employment had commenced, nor until suit had been brought by respondents for appellant against the alien property custodian, which later resulted in favor of appellant for the return of all the property seized.

As shown in quotation of the findings of the lower court (p. 172-175) Munter & Munter were employed by Mr. Albert in 1921 to perform various services; that employment developed into the work of securing the return of money and property which had been taken into custody by the Alien Property Custodian; and on March 3, 1923, Munter & Munter, with the consent and under the authority of Mr. Albert, instituted an equity action in the District Court of the United States for the Eastern District of Washington, for the establishment of Mr. Albert's status as a citizen of the United States and for the recovery of the seized property.

Prior to April, 1923, there was no agreement or contract between Mr. Albert and Munter & Munter as to the amount of compensation the attorneys

should receive for their services; but a few days prior to April 18, 1923, Munter & Munter discussed with Mr. Albert the amount of their compensation and presented to Mr. Albert and asked him to sign a 25% contingent fee contract. Mr. Albert signed the contract on April 18, 1923. At first, Mr. Albert refused to sign the contract proposed, declaring that the contingent fee requested was excessive and stating that he could get the same services for less. He was told to go and see other lawyers; and he did consult the firm of Graves, Kizer & Graves. He conferred with Mr. Kizer of that firm at some length; and Mr. Kizer informed him that, under all of the circumstances, Mr. Kizer thought a contingent fee of $33\frac{1}{3}\%$ of the amount recovered would be fair and reasonable.

In upholding the contingent fee contract, the Supreme Court referred to its earlier decision in *Beck v. Boucher*, 114 Wash. 574, 195 Pac. 996, and stated (136 Wash. 164, 176) :

In the last cited case, this court held that an agreement for contingent attorney's fees, entered into without fraud or misrepresentation, is not void as against public policy, since we have a statute (cited in the decision) authorizing such contracts, and that a client who permits an attorney to spend time and money under a contract for a contingent fee, and accepts the benefits of the contract, is estopped to assert its invalidity on the ground that it was solicited and that it was against public policy.

(Underscoring added.)

In this case, as the lower court found, and on the whole record, we have no doubt whatever that the contract in question was entered into fairly and understandingly, was acted upon by respondents with great skill, energy and fidelity, that their services were multifarious and valuable, that they could not have foreseen the ultimate result of their activities in behalf of appellant, and that a contingent contract for their attorney's fee on his and their part was almost unavoidable. We are, therefore, well satisfied to sustain the findings of the trial court as to the reasonableness, good faith and enforceability generally of the contract.

In *State ex rel. Hunt v. Okanogan County*, 153 Wash. 399, 280 Pac. 31, the Supreme Court upheld a 50% contingent fee contract made by Okanogan County with Hunt for services in preparing data and arguments and presenting the same before the Department of the Interior and the Congress, in support of the county's equitable and moral claim against the United States for a sum of money to provide a measure of compensation in lieu of taxes upon certain Indian allotments. The contract was with Clair Hunt, an engineer; and after entering into the contract in 1920 he compiled a large amount of the necessary data in that year and in 1921. Thereafter he assigned his interest in the contract to his son, Ward Hunt, a practicing attorney in the State of Washington, who continued performance of the contract. By Act of Congress

in 1928, provision was made for payment to the county treasurer of Okanogan County of the sum of \$77,435.31 in satisfaction of the claim of Okanogan County, which had been asserted for the sum of \$139,984.71. The sum of \$77,435.31 was paid by the United States to the treasurer of Okanogan County on August 7, 1928; and on the following day attorney Hunt presented to the commissioners of Okanogan County his claim for 50% of the sum, a claim for compensation in the amount of \$38,717.65. The county commissioners rejected and disallowed the claim and refused to pay the same or any portion thereof. Shortly thereafter attorney Hunt commenced a mandamus proceeding to compel payment in accordance with the 1920 contract entered into by Okanogan County, a municipal corporation acting through its then board of commissioners. The Superior Court gave judgment in favor of the defendants; but upon appeal the Supreme Court reversed the judgment and directed the county court to compel payment of the 50% contingent fee to attorney Hunt. .

The trial judge had rested his decision upon the theory that the contract was a lobbying contract, such as the courts hold to be void as against public policy; but the Supreme Court was of the opinion that the contingent fee contract was not, upon its face nor because of the manner of the rendering of the service, void as being against public policy.

It was also contended in behalf of Okanogan County and the other respondents that the contingent fee contract of the county with attorney

Hunt and his assignor was void for want of statutory power, express or implied, vested in the county commissioners to enter into such a contract. The Court decided against the county on this contention, and in its opinion (153 Wash., at p. 422) cited with approval the earlier decision in Williamson v. Snohomish County, 64 Wash. 233, 116 Pac. 675, in which the court had held that the county commissioners, under their general statutory powers and duties to care for the county's property and interests, were authorized to employ an alienist to aid the prosecuting attorney in a criminal prosecution, in which a defense plea of insanity had been made. As the court stated: "The general powers of the county commissioners were therefore invoked in that behalf (as authority for the contract with the alienist), and held legally sufficient to enable them to contract for such services and bind the county to pay therefor; * * *." And the court's opinion continued, with regard to attorney Hunt's contract with the municipal corporation of Okanogan County (153 Wash., at p. 423):

We are of the opinion that the employment of relator and his predecessor by the county commissioners was within their statutory powers. We do not concern ourselves in this case with the question of the wisdom of the making of the employment contract here in question. Indeed, we are not asked by counsel on either side to do so. We are only deciding that the commissioners had the power to make

the contract, and that, it being faithfully and effectually performed and the county having reaped the benefit thereof, relator is entitled to compensation according to the terms of the contract.

II.

Priest Rapids Irrigation District Had Authority to Enter Into the Contingent Fee Contract With Petitioners.

The district's board of directors not only had the authority, but was also under the duty, to do everything necessary to the defense by said district in the condemnation action. The authority of the district's board to make the contingent fee contract with Moulton & Powell and J. K. Cheadle was based upon statutes as broad as, or broader than, those relied upon in *State ex rel. Hunt v. Okanogan County*, 153 Wash. 399, 280 Pac. 31. Moreover, the district's board had the authority of the August 1, 1946, decree entered by the Superior Court of the State of Washington in and for Benton County in cause No. 8035, entitled *C. I. Wright and Mamie Wright, husband and wife, B. Salvini, J. H. Evett and Priest Rapids Irrigation District, a municipal corporation of the State of Washington, v. Chapman, et al.*

Remington's Revised Statutes, Section 7428, regarding an irrigation district's board of director's, provides that:

The board shall have the power, and it shall be its duty, * * * to make and execute all necessary contracts, * * * and generally to perform

all such acts as shall be necessary to fully carry out the provisions of this chapter, * * *.

Remington's Revised Statutes, Section 7431, authorizes and empowers the board of directors:

to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this chapter, or acquired in pursuance thereof; and in all courts, actions, suits, or proceedings, the said board may sue, appeal, and defend, in person or by attorney, and in the name of such irrigation district.

And the Benton County court in the above-mentioned decree ofg August 1, 1946, ordered, adjudged and decreed:

That plaintiffs B. Salvini and J. H. Evett are de facto directors of the Priest Rapids Irrigation District and that, until further order or decree of this Court as hereinafter provided for, said plaintiffs shall continue to function as directors of said district and in particular shall do any and all things necessary to the defense by said district against the petitioner in the condemnation action of United States of America v. Alberts, et al., Civil No. 128 in the United States District Court for the Eastern District of Washington, and necessary to protect otherwise the interests

of said district; and that pursuant to vouchers approved by said de facto directors, the County Auditor of Benton County, Washington, shall issue warrants, and the County Treasurer of Benton County, Washington, shall pay said warrants, in the same manner and with the same effect as provided by the laws of the State of Washington with respect to vouchers approved by irrigation district directors.

For the convenience of the Court, a copy of the entire said decree of August 1, 1946, is attached to these Points and Authorities as Exhibit "A." A certified copy will be offered in evidence at the hearing on January 5, 1950.

It is submitted that the authority of the district's board to make the contingent fee contract is explicit in the above-quoted statutes. Beyond question such authority is within the object, spirit and meaning of the Washington statutes regarding irrigation districts. And the controlling canon of statutory construction is as stated (and applied) in *State ex rel. Thorp v. Devin*, 26 Wn. (2d) 333, 345, 173 P. (2d) 994:

The general purpose or spirit of a legislative act must always be held in view, and absurd consequences avoided as far as possible. *Dennis v. Moses*, 18 Wash. 537, 52 Pac. 333, 40 L.R.A. 302; *State v. Asotin County*, 79 Wash. 634, 140 Pac. 914; *In re Horse Heaven Irr. Dist.*, 11 Wn. (2d) 218, 118 P.(2d) 972; *Martin v. Department of Social Security*, 12 Wn. (2d) 329,

121 P. (2d) 394. A thing which is within the object, spirit, and meaning of a legislative act is as much within the act as if it were within the letter. State ex rel. Spokane United Rys. v. Department of Public Service, 191 Wash. 595, 71 P.(2d) 661; 2 Lewis' Sutherland Statutory Construction (2d ed.) secs. 369, 379. (Underscoring added.)

And as the Supreme Court of the State said in *Beasley v. Assets Conservation Co.*, 131 Wash. 439, 443, 230 Pac. 411, in upholding the validity of a contract under which warrants were issued by an irrigation district:

Its (district's) powers are not only such as are granted in express words, but also those necessary or fairly implied in or incident thereto or indispensable to its declared objects and purposes.

Moreover, the State Supreme Court allows irrigation districts' boards of directors to exercise wide latitude of discretionary judgment. In *Hanson v. Kittitas Reclamation District*, 75 Wash. 297, 313, 134 Pac. 1083, the action involved the question of whether the district board should be enjoined from incurring further indebtedness in behalf of the district until a water supply was secured from some certain source; and in refusing the injunctive relief and upholding the board, the Supreme Court stated:

The board of directors are clothed by the statute with a wide discretion as to the man-

ner in which they shall manage the business of the district, and the courts are not warranted in interfering on any mere question of good business policy. Nothing short of a gross abuse of their powers will warrant such an interference.

Moreover, the authority of the *de facto* directors of the Priest Rapids Irrigation District to act for the district and to defend the condemnation action is clear and is *res adjudicata* in the above entitled cause. Their authority was attacked by the Government's "motion for appointment of trustee or receiver and for restraining order" filed on May 6, 1946. The Government by that motion sought to have this Court appoint a trustee or receiver of the district, and sought to have this Court enjoin the district and its *de facto* officers from proceeding further as plaintiffs in the Benton County court proceeding of Wright et al. v. Chapman et al., No. 8035. In said motion the Government contended, among other things, that the Benton County court was without jurisdiction and that the officers of the district were disqualified to act for or on behalf of the district. Said motion was argued on May 15, 1946, and on June 1, 1946, this Court announced its decision denying the motion. And the Government did not appeal from the order of this Court, entered June 26, 1946, denying the motion.

III.

Payment of the Contingent Fee from the Money
Paid Into This Court in Satisfaction of the
Deficiency Judgment in Favor of the District
Is Proper

The Priest Rapids Irrigation District, its de facto directors and its attorneys in good faith and upon reasonable grounds defended the condemnation action brought by the Government. Furthermore, they defended it successfully. Their defense resulted in a deficiency judgment in favor of the district and against the Government for \$422,252.80, which represents \$302,856.00 in additional value of the properties condemned and \$119,396.80 in interest. The deficiency judgment in favor of the district is the product of the successful defense; and it is an asset of the district.

The deficiency judgment orders, adjudges and decrees that the only person having an interest in and to the compensation fixed by the judgment is the Priest Rapids Irrigation District, a public corporation. Said district by its resolution of November 19, 1949 (Exhibit "B" of the petition), has approved the determination and computation of the fee due and payable under the contingent fee contract and has consented to payment of the fee from the proceeds of the deficiency judgment.

Even if the Government, in the Benton County court proceedings for winding up the affairs of the district, should succeed in establishing a right to have the district's assets distributed to the Govern-

ment, the district's attorneys' fees and expenses incurred in unsuccessfully contesting the Government in the state court proceedings could be charged against the assets involved in the state court proceedings.

In *Watson v. Johnson*, 174 Wash. 12, 16, 17, 24 P. (2d) 592, the receiver of a savings and loan association contested allowance of claims for attorneys' fees and other litigation expenses incurred by the association's de facto directors in resisting (unsuccessfully) the application for appointment of a receiver. The de facto directors sought to effect a voluntary liquidation, but they unsuccessfully contested the application of the state director of efficiency for appointment of a receiver. The receiver appealed from the trial court's allowance of attorneys' fees and costs incurred by the de facto directors in resisting the receivership in the state court. The Supreme Court affirmed the trial court, except for revising upward the amount of the attorneys' fees allowed.

In explanation of its decision, the Supreme Court stated (174 Wash., at p. 16):

The principle upon which an allowance is made is that counsel fees and costs of the litigation are in the nature of expenses incurred by the corporation and its directors in the protection and preservation of the trust which they represent; and even if it turns out that a case is made for interference by the appointment of a receiver and the dissolution of the

corporation, so long as the defense was made in good faith and upon reasonable grounds, there is apparent justice in subjecting the property and the fund involved in the litigation to the expenses incurred in discharging a general duty cast upon the corporation and its directors to take all reasonable means for its protection.

In view of *Watson v. Johnson*, *supra*, it is clear that in this condemnation action the attorneys' fee for the successful defense by the district should be paid from the proceeds of the deficiency judgment in favor of the district.

IV.

The Contingent Fee Is Reasonable

The contingent fee is slightly less than 20% of the deficiency judgment, computed after deducting expenses.

This Court is fully aware of the novelty and difficulty of the questions involved in the condemnation action. Here reference is made only to Judge Schwellenbach's statement, in his memorandum opinion of June 21, 1945:

we have presented here an anomalous situation in which very little benefit can be derived from other cases.

and to this Court's statement in the oral opinion of June 1, 1946:

we have here a peculiar situation. If there has been a case before where the Government has taken over the entire irrigation system and all of the lands of the system and all of the works and properties of the district in one stroke, as has been effected here, that case has not been called to the Court's attention.

When the contingent fee contract was made in 1946 it seemed likely that the case would be carried to the Supreme Court of the United States. It was appealed to the Court of Appeals; and not until September, 1949, was it determined that Supreme Court review would not be sought.

A great amount of time and labor was required properly to conduct the case.

The compensation to the attorneys was contingent, except for the two thousand dollars paid by the district in 1943. And the contingency upon which the contingent fee depended required not only success in the matter of valuation of the district's properties but also success against the government's contention that as a matter of law no additional compensation was due the district, regardless of what the value of the district's properties might be.

The above-mentioned factors and other factors show that the contingent fee was reasonable.

In Hardman v. Brown, 153 Wash. 85, 279 Pac. 91, a 50% contingent fee was upheld. In Albert v. Munter, 136 Wash. 164, 239 Pac. 210, a 25%

contingent fee was upheld. In *State ex rel. Hunt v. Okanogan County*, 153 Wash. 399, 280 Pac. 31, a 50% contingent fee contract with a municipal corporation was upheld.

In this case, considering all relevant factors, it is submitted that the contingent fee could have been considerably larger and still have been reasonable.

If the condemnation case had been decided in accordance with the Government's contentions, there would have been no award in excess of the amount deposited in Court; and the district's attorneys would not have received any compensation beyond the two thousand dollars paid by the district in 1943. In that event, the attorneys' time and efforts (and their substantial out-of-pocket expenditures for office overhead, less only the two thousand dollars) would have been uncompensated. Instead, the litigation was successful and resulted in a deficiency judgment in favor of the district in the total sum of \$422,252.80. The district by its resolution of November 19, 1945, has approved determination of the fee payable to the district's attorneys under the contingent fee contract in the sum of \$78,918.85, and has consented to its payment by the Clerk of this Court from the money paid into Court in satisfaction of the deficiency judgment.

In view of the foregoing Points and Authorities, and the evidence to be adduced at the hearing on January 5, 1950, this Court should enter the order

prayed for in the petition for payment of attorneys' fee.

Respectfully submitted,

MOULTON & POWELL,

By /s/ CHARLES V. POWELL,

/s/ J. K. CHEADLE,

Petitioners and Attorneys for the Priest Rapids Irrigation District.

Exhibit "A"

In the Superior Court of the State of Washington
in and for Benton County

No. 8035

C. I. WRIGHT and MAMIE WRIGHT, Husband
and Wife, B. SALVINI, J. H. EVETT, and
PRIEST RAPIDS IRRIGATION DIS-
TRICT, a Municipal Corporation of the State
of Washington,

vs.

HARLEY E. CHAPMAN, COUNTY AUDITOR
of BENTON COUNTY, WASHINGTON, and
C. W. NESSLY, County Treasurer of Benton
County, Washington,

Defendants.

DECREE

The above-entitled cause having come on for trial on the 12th day of July, 1946, the plaintiffs being represented by their attorney, J. K. Cheadle, and the defendants by their attorney, Andrew

Brown; said cause, pursuant to stipulation of counsel, having been consolidated for purposes of trial with the action of Dietrich, et al. v. Chapman et al., No. 7987; and A. E. Taylor, successor of Harley E. Chapman as County Auditor of Benton County, on motion made in open court and pursuant to consent of his attorney, appearing for him, having been substituted for said Harley E. Chapman as a party defendant; and a suggestion of want of jurisdiction of this Court having been presented by the Suggestion of Interest filed herein by the United States of America on May 1, 1946, and an analogous question of jurisdiction having been decided previously in favor of the jurisdiction of this Court by this Court's denial on April 11, 1946, of the motion to quash and dismiss filed in said action No. 7987 by the United States of America under special appearance for that purpose, and the jurisdiction of this Court in the above entitled cause having been upheld by the denial of the motion for appointment of trustee or receiver and for restraining order filed by the United States of America on May 6, 1946, in the United States District Court for the Eastern District of Washington in United States v. Alberts, et al., Civil No. 128, and denied by the order of said Court entered on June 26, 1946, and this Court having decided on July 12, 1946, in conformance with said prior decisions and contrary to said suggestion, that this Court has jurisdiction, and accordingly having proceeded to trial on the merits; and upon said trial it appearing to the Court, and being so found by the Court, that the

facts are as alleged in the complaint and in particular that the defendants, although acting in good faith, have threatened to refuse to issue and pay warrants on the funds of the Priest Rapids Irrigation District on the basis of vouchers approved by the plaintiffs B. Salvini and J. H. Evett; and the court, upon consideration of the facts and the applicable law and being fully advised in the premises, having concluded that the plaintiffs are entitled to a decree granting relief against the defendants and making provisions for further appropriate proceedings;

Now Therefore, It Is Hereby Ordered, Adjudged and Decreed: That plaintiffs B. Salvini and J. H. Evett are *de facto* directors of the Priest Rapids Irrigation District and that, until further order or decree of this Court as hereinafter provided for, said plaintiffs shall continue to function as directors of said district and in particular shall do any and all things necessary to the defense by said district against the petitioner in the condemnation action of United States of America v. Alberts, et al., Civil No. 128 in the United States District Court for the Eastern District of Washington, and necessary to protect otherwise the interests of said district; and that pursuant to vouchers approved by said *de facto* directors, the County Auditor of Benton County, Washington, shall issue warrants, and the County Treasurer of Benton County, Washington, shall pay said warrants, in the same manner and with the same effect as provided by the

laws of the State of Washington with respect to vouchers approved by irrigation district directors.

It Is Further Ordered, Adjudged and Decreed that this Court retains jurisdiction of this cause for appropriate supervision of the administration of said irrigation district and for further appropriate proceedings directed toward dissolution of said district and distribution of the assets of said district.

It Is Further Ordered, Adjudged and Decreed that any award in the condemnation action, United States of America v. Clements P. Alberts, et al., Civil No. 128, which may be ordered by the District Court of the United States for the Eastern District of Washington to be paid to the Priest Rapids Irrigation District, shall upon receipt by said district be paid into this Court, to be paid out upon order of this Court after further appropriate proceedings.

It Is Further Ordered, Adjudged and Decreed that within a period of sixty days after final decision in said condemnation action, including final disposition of any appeal or review proceedings therein, said de facto directors shall report to this Court the final decision in said condemnation action and shall suggest, by petition to this Court, such proceedings directed toward dissolution of the Priest Rapids Irrigation District, appointment of trustees and distribution of the assets of said district as shall be deemed by them to be appropriate.

Done in open court this 1st day of August, 1946.

/s/ TIMOTHY A. PAUL,
Judge of the Superior Court.

Presented by

/s/ J. K. CHEADLE,
Attorney for Plaintiffs.

Approved as to Form

/s/ ANDREW BROWN,
Attorney for Defendants.

[Endorsed]: Filed January 5, 1950.

[Title of District Court and Cause.]

CROSS APPELLANTS' STATEMENT
OF POINTS ON APPEAL

1. The District Court erred in ruling that payment of attorneys' fee to Moulton & Powell and J. K. Cheadle, attorneys for the Priest Rapids Irrigation District, in the sum of \$78,918.85 from the registry of the above-entitled court should not be made in accordance with the petition of Moulton & Powell and J. K. Cheadle, and in accordance with the resolution of the Priest Rapids Irrigation District board of directors approving and consenting to payment of the contract attorneys' fee in said amount from the \$422,252.80 paid into the District Court in satisfaction of the deficiency judgment in favor of said district.

2. The District Court erred in concluding upon consideration of all relevant matters that the sum of \$55,000.00 is appropriate and reasonable compensation for the services in this condemnation action which have been performed by the attorneys for the Priest Rapids Irrigation District on what was necessarily a contingent basis, and in failing to conclude upon consideration of all relevant matters that the sum of \$78,918.85 is appropriate and reasonable compensation for said services.

3. The District Court erred in ordering that \$55,000.00 be withdrawn from said sum of \$422,252.80 for the payment of attorneys' fee to Moulton & Powell and J. K. Cheadle and in refusing to order that the sum of \$78,918.85 be so withdrawn from said \$422,252.80 for such payment.

MOULTON & POWELL and
J. K. CHEADLE,

By /s/ CHARLES L. POWELL,
Cross Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed March 30, 1950.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

1. The district court erred in entering the order appealed from.
2. The district court erred in holding that the appellees were entitled to be compensated for their

legal services rendered in the condemnation proceedings against the Priest Rapids Irrigation District out of the sum paid in satisfaction of the judgment entered in that case.

/s/ A. DEVITT VANECH,
Assistant Attorney General.

BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

/s/ JOHN F. COTTER,
Attorney, Department of
Justice, Washington, D. C.

[Endorsed]: Filed May 31, 1950.

In the District Court of the United States for the Eastern District of Washington, Southern Division

No. 128-99

UNITED STATES OF AMERICA,

Petitioner,

vs.

CLEMENTS P. ALBERTS, et al., and PRIEST RAPIDS IRRIGATION DISTRICT, a Municipal Corporation of the State of Washington, Defendants.

Before: Honorable Sam M. Driver,
United States District Judge.

Appearances:

BERNARD H. RAMSEY,

Special Assistant to the Attorney General,
Department of Justice, of Yakima,
Washington,

For the petitioner United States of America.

CHARLES L. POWELL, of
MOULTON & POWELL,

Kennewick, Washington, and

J. K. CHEADLE,

Spokane, Washington,

For the defendant Priest Rapids Irrigation District and the petitioning attorneys.

RECORD OF PROCEEDINGS AT THE HEARING ON PETITION FOR PAYMENT OF ATTORNEYS' FEE

Be It Remembered that the above-entitled cause came on before the Honorable Sam M. Driver, Judge of the above-entitled Court, at Yakima, Washington, on Thursday, January 5, 1950, for hearing upon petition for payment of attorneys' fee and other matters; the petitioner United States of America being represented by Bernard H. Ramsey, Special Assistant to the Attorney General, Department of Justice, of Yakima, Washington, the defendant Priest Rapids Irrigation District and the petitioning attorneys being represented by Charles L. Powell of Moulton & Powell, of Kennewick, Washington, and J. K. Cheadle, of Spokane, Washington, whereupon the following [34*] proceedings were had and done, to wit:

The Court: Do you have witnesses as to the reasonableness of the fee, Mr. Powell?

Mr. Powell: Yes, your Honor.

The Court: Well, they should be put on first.

Mr. Powell: I might state there are three matters, and I'm not sure what counsel's position is as to the other two.

The Court: I didn't get that very clearly either.

Mr. Ramsey: As to the petition for the payment of the outstanding certificates of indebtedness, it appears to me that is an obligation which has been incurred by the District and must necessarily be met. I haven't any disposition to haggle around here

about what the certificates were sold for. Actually the District obligated itself for \$8,000, and I don't consider that it's any particular business of mine, and I'm not going to ask the court to make it any business of his as to just what they realized out of those certificates of indebtedness. I think I shall interpose no objection whatever to an allowance from the funds in this court for the payment of those certificates of indebtedness. As to the cost bill, there are a number of items in that cost bill that I would very much like to inquire into.

The Court: That's the two thousand and something, isn't it?

Mr. Ramsey: Yes. [35]

The Court: The outstanding indebtedness is \$8,000, and then there's \$2100.00 that the District is claiming for expenses?

Mr. Powell: \$2,805.00.

The Court: Is that claimed as expenses in the litigation here in Federal court?

Mr. Powell: Yes, your Honor; it exceeded \$8,000, and against that was credited the \$6,000 we received from the sale of the certificates of indebtedness, leaving a balance of \$2,000 plus.

The Court: Very well, I think I understand your attitude, then.

Mr. Powell: Then if I may, if your Honor please, in connection with the certificates of indebtedness, if your Honor would wish me to do so, file the original certificates and receipts showing payment of the money, and then we can prepare and enter an order.

The Court: Well, as I understand it, Mr. Ramsey is questioning the amount of expense that you incurred or claim that you had incurred in the prosecution of this litigation in this court and the Court of Appeals. It would be difficult, I think, to divide that, because part of it was paid with the receipts of your sale of the warrants of the District, wasn't it?

Mr. Powell: Yes. [36]

The Court: You couldn't sell them at par, but what you realized was about \$6,000, then added to that was a \$2,000 deficiency. I assume if Mr. Ramsey is going to question the propriety of your expenditures he'd have to go into the \$6,000 as well as the \$2,000.

Mr. Ramsey: That is correct, your Honor. The \$6,000 has been paid over to them, and the party who purchased those certificates must be repaid. As to the so-called cost bill and the further petition that this court allow an additional sum of \$2805.00, as to that I do desire to go into a number of items appearing in the so-called cost bill.

The Court: I understand what you mean; these certificates of indebtedness are outstanding and Mr. Ramsey concedes that they should be paid, then the controversy necessarily must limit itself to whether you should be allowed an additional \$2800.00, but whether you should or not would, I should think, depend upon the propriety of all your expenditures there.

Mr. Powell: I thought perhaps we could dispose

of the one petition for payment of the certificates of indebtedness, but if not, we'll let that ride.

The Court: I think we can, yes.

Mr. Ramsey: Oh, yes.

Mr. Powell: Then we can agree on an order, and if your Honor wants me to, I can file the original certificates.

The Court: All right. [37]

Mr. Powell: And a certified copy of the order.

Mr. Ramsey: I presume if you do that you will in your order provide that the clerk of this court shall pay to the holder of those certificates of indebtedness the face sum of the certificates, or the \$8,000.

Mr. Powell: Plus the interest that they bear.

Mr. Ramsey: Well, I assume so, yes.

The Court: They're to be paid by the clerk directly to the holders?

Mr. Cheadle: We have prepared an order on that, your Honor; the order if found agreeable and signed by the court would call for the clerk to pay the \$8,000 face value plus interest at the rate of 4 per cent to the holder of the certificates upon their surrender of the certificates to the clerk of the court.

The Court: You haven't got that order prepared, have you?

Mr. Cheadle: Yes; it's been presented to Mr. Ramsey.

Mr. Ramsey: I have no objection to the order other than I question the propriety of the statement that the proceeds of said certificates of indebtedness were used by the Priest Rapids Irrigation District

in paying the costs and expenses of the defense of the above-entitled cause. Until inquiry is made I'm not prepared to concede that the whole sum was so paid. [38]

The Court: I don't think I got over my point awhile ago. I was trying to say that Mr. Ramsey concedes, he has no objection to the payment of the warrants, but he doesn't thereby admit that the proceeds was properly spent in the prosecution of this case.

Mr. Ramsey: That's what I meant, and other than that one recitation in the order, I have no objection to the order.

The Court: Well, that isn't essential to the order, is it, Mr. Powell?

Mr. Powell: I think not.

The Court: What you want is to get them paid, and you can leave out the recitation of what was done with the money.

Mr. Ramsey: The particular portion I object to is: "and that the proceeds of said certificates of indebtedness were used by the Priest Rapids Irrigation District in paying costs and expenses incurred by said District in its defense in the above-entitled cause."

The Court: Have you any objection to striking that out?

Mr. Powell: No, your Honor; it's a recitation.

The Court: I think so. Other than that you have no objection?

Mr. Ramsey: Other than that I have no objection.

The Court: Are these other gentlemen here as witnesses?

Mr. Powell: Yes, sir.

The Court: I wonder if you might not call them and have [39] them testify, and then we can argue the rest of the matters out in their absence.

Mr. Powell: I would be glad to do that. We'd like to make this statement, however, that there is a contract between the irrigation district and the directors and the attorneys, and that that contract, the only issue we understood your Honor would be interested in hearing is whether that contract, being a contingent contract, was a fair and reasonable contingent fee contract under the circumstances. Now, of necessity all of the services performed were to be compensated for on a contingent basis because of the fact there was no money if there was no fund.

The Court: And also it's true, is it not, that there was a substantial conflict as to all of that part of a possible award on which you could get your percentage of recovery? The government conceded it should pay \$169,000, the amount of the bonds, but you were not to take any part of that?

Mr. Powell: That's right.

The Court: And the government was seriously contesting your right to recover anything over the \$169,000?

Mr. Powell: That's correct.

The Court: I understand; I think that should be the basis of the testimony, not what would be a fair and reasonable value of the services rendered, but was it a fair and reasonable compensation on a con-

tingent basis under the circumstances [40] that existed and the work to be done.

Mr. Powell: That's correct. I don't know whether under those circumstances it would be necessary for us to detail all of the work we had done except to give a general idea of what it was. I think perhaps we had better proceed by putting on the secretary of the District to prove the circumstances of the contract and the execution of it, unless there's no question about it.

The Court: All right. [41]

R. S. REIERSON

called as a witness on behalf of the petitioning attorneys, being first duly sworn, testified as follows:

Direct Examination

By Mr. Cheadle:

Q. State your name to the reporter, please.

A. R. S. Reierson.

Q. Are you now secretary of the Priest Rapids Irrigation District, Mr. Reierson? A. I am.

Q. For how long have you occupied that position, approximately?

A. I think approximately since March, 1944.

Q. Prior to March, 1944, were you a director of the Priest Rapids Irrigation District?

A. I was a director.

Q. For a time back as far as 1942?

A. I was on my second term of three years.

Q. And that would go back farther than that date? A. Yes.

(Testimony of R. S. Reierson.)

(Whereupon, agreement August 20, 1946, was marked petitioner's Exhibit No. 1 for identification.)

(Whereupon, resolution dated November 19, 1949, was marked petitioner's Exhibit No. 2 for identification.) [42]

Q. Handing you, Mr. Reierson, a paper that has been marked petitioner's identification number 1, will you state briefly what that is?

A. That is an agreement entered into between the Priest Rapids Irrigation District and attorneys Moulton & Powell on August 30, 1946.

Q. Is it an executed counterpart of the contract?

A. It is, yes.

Q. If the Court will permit I'll have both of the documents identified and hand them to counsel at the same time. Handing you what has been marked petitioner's 2, will you state what it is?

A. It is a resolution of the board of directors of the Priest Rapids Irrigation District regarding payment of attorneys' fees to Moulton & Powell and J. K. Cheadle.

Q. What date does it bear?

A. Passed by the board of directors of the Priest Rapids Irrigation District this 19th day of November, 1949.

Q. Is that an executed counterpart of that resolution, bearing the seal of the district?

A. Yes.

Mr. Cheadle: We offer as exhibit 1 the paper

(Testimony of R. S. Reierson.)

that's been marked as identification number 1 and identified by the witness.

Mr. Ramsey: No objection. [43]

Mr. Cheadle: No objection to either, Mr. Ramsey? We also offer number 2, the resolution.

Mr. Ramsey: No objection.

The Court: Number 1 and number 2 will be admitted.

(Whereupon, petitioner's Exhibits No. 1 and 2 for identification were admitted in evidence.)

PETITIONER'S EXHIBIT No. 1

This Agreement made and entered into this .. day of1946, by and between Priest Rapids Irrigation District, hereinafter designated "District," and Moulton & Powell and J. K. Cheadle, herein-after designated "Attorneys," Witnesseth:

Whereas, an action is now pending in the United States District Court, for the Eastern District of Washington, Southern Division, involving condemnation of property of the District, and Moulton & Powell have been heretofore employed to protect the interests of the District, and certain payments have been made to them under said contract; and whereas it has developed that said litigation is much more involved and the likelihood of appeal is much greater than initially contemplated;

Now, Therefore, it is hereby mutually understood and agreed that the District does hereby employ the

(Testimony of R. S. Reierson.)

attorneys to represent it in the above-described action and that the Attorneys will give their best efforts and all time necessary to the proper preparation and presentation of the case in behalf of the District.

The Attorneys acknowledged and accept the sums heretofore paid to them in cash in the sum of \$2000.00 as the only retainer or certain fee. In addition to said cash retainer or certain fee, the District will pay to the Attorneys a contingent fee based upon percentages of the amounts by which the condemnation award exceeds \$169,850.00 (the amount of the District's bonded indebtedness paid with money deposited by the Government in court in said condemnation case). Said percentages shall be as follows:

30% of the first \$100,000.00 in excess of \$169,850.00.

20% of the second \$100,000.00 in excess of \$169,850.00.

10% of the third \$100,000.00 in excess of \$169,850.00.

5% of all additional amounts in excess of \$169,850.00.

It is understood and agreed that in the event the condemnation award does not exceed \$169,850.00, then no fee in addition to said cash retainer or certain fee will be paid to the Attorneys.

The District agrees to pay all of the costs necessary in the proper presentation of said case for

(Testimony of R. S. Reierson.)

trial and on all appeals and will furnish all necessary information to the Attorneys on request.

The Attorneys agree that, before any computation of the additional, contingent fee shall be made, there shall first be deducted from the award and reimbursed to the District the amount paid by the District as costs. The Attorneys also agree that they will allow as a credit upon any additional, contingent fee to be paid to the Attorneys the sum of \$2000.00 heretofore paid as the cash retainer or certain fee.

This agreement shall not be binding upon the directors of the District personally in any manner, in the event the Court should hold that they as directors are not authorized to make it.

This contract shall supersede the contract heretofore made between the district and Moulton & Powell.

Dated this 30th day of August, 1946.

PRIEST RAPIDS
IRRIGATION DISTRICT,

By /s/ B. SALVINI,
President.

[Seal] /s/ R. S. REIERSON,
Secretary.

MOULTON & POWELL,
By /s/ CHARLES L. POWELL,
/s/ J. K. CHEADLE.

(Testimony of R. S. Reierson.)

PETITIONER'S EXHIBIT No. 2

RESOLUTION OF THE BOARD OF DIRECTORS OF THE PRIEST RAPIDS IRRIGATION DISTRICT REGARDING PAYMENT OF ATTORNEYS' FEE TO MOULTON & POWELL AND J. K. CHEADLE

Whereas, the Priest Rapids Irrigation District by its Board of Directors entered into a contract with Moulton & Powell and J. K. Cheadle on the 30th day of August, 1946, employing said attorneys to represent said District in the condemnation action of the United States of America v. Alberts, Priest Rapids Irrigation District, et al., No. 128-99 in the United States District Court for the Eastern District of Washington; and

Whereas, said attorneys have performed said contract by representing said District in said cause in said District Court and in the Court of Appeals for the Ninth Circuit; and

Whereas, following disposition of said cause by the Court of Appeals neither party petitioned for review by the Supreme Court of the United States; and the disposition of said cause by the Court of Appeals thus became final; and

Whereas, in accordance with said contract with said attorneys, it has been determined by the Board of Directors of said District that the expenses incurred by said District as expenses and costs in the defense of said action amount to \$6805, that said

(Testimony of R. S. Reierson.)

sum deducted from the condemnation award of \$302,856 leaves a balance of \$296,051.00 as the basis for computation of the fee in accordance with said contract; and that said fee thus computed, less the credit of \$2000.00 allowed for the cash retainer or certain fee heretofore paid, together with interest at the rate of 6% per annum allowed in the condemnation judgment and computed for the purposes of said contract from October 1, 1943, to December 1, 1949, amounts to \$78,918.85.

Now, Therefore, Be It Resolved that said determination and said computation of said fee due and payable said attorneys under said contract in the sum of \$78,918.85 be and hereby is approved and that consent of said District be and hereby is given to payment of said sum of \$78,918.85 to said attorneys by the Clerk of said District Court from the sum paid or to be paid into the registry of said Court in said cause, Docket No. 128-99.

Passed by the Board of Directors of the Priest Rapids Irrigation District this 19th day of November, 1949.

/s/ B. SALVINI,
President and Director.

/s/ J. H. EVETT,
Director.

Attest:

[Seal]: /s/ R. S. REIERSON,
Secretary.

1/5/50.

(Testimony of R. S. Reierson.)

Mr. Cheadle: That is all, Mr. Reierson.

Cross-Examination

By Mr. Ramsey:

Q. I notice that referring now to plaintiff's or to petitioner's exhibit 1, that in paragraph 2 of this instrument is the following recitation: "Whereas, an action is now pending in the United States District Court, for the Eastern District of Washington, Southern Division, involving condemnation of property of the District, and Moulton & Powell have been heretofore employed to protect the interests of the District, and certain payments have been made to them under said contract; and whereas it has developed that said litigation is much more involved and the likelihood of appeal is much greater than initially contemplated; now, therefore——" there was a contract entered into with Moulton and Powell in 1943?

A. Yes.

Mr. Cheadle: Just a moment, please. We will object to the question and move that it and the answer be [44] stricken as not proper cross-examination. Apparently this is part of Mr. Ramsey's case. If the Court deems fit that we go into what I gather is the government's position, we will do that. We were proceeding to put in our case in line with the preliminary statements made to the Court.

The Court: Well, in view of the fact that the

(Testimony of R. S. Reierson.)

contract itself mentions the prior contract, I think Mr. Ramsey has the right to inquire into it on cross-examination. I'll overrule the objection.

(Whereupon, the reporter read the last previous question and answer.)

Q. (By Mr. Ramsey): Under which Moulton & Powell were to represent the District in any legal action that might grow out of the condemnation action which the government had filed against the properties of the District, is that correct?

Mr. Cheadle: Just a moment, please. Object to that, your Honor, on the ground it is not the best evidence, if there was a previous contract, and in view of your Honor's ruling on the previous question and answer, if your Honor sees fit to have that we will put in the best evidence right now.

Mr. Ramsey: I don't have that contract; it is mentioned in this contract; I think I have a right to inquire into that contract.

The Court: Then you can find out whether it's written or not.

Q. (By Mr. Ramsey): Is that correct?

A. There was a contract drawn up in October, I think, 1943.

Q. Was that a written contract?

A. Prior to that the directors passed resolutions engaging Moulton & Powell to represent them, and authorized the payment of \$2,000.00.

The Court: I'm not sure that you understood the question, Mr. Reierson. I don't believe it was

(Testimony of R. S. Reierson.)

directly answered. Counsel asked you if it was a written contract.

A. Yes, it was a written contract.

Q. Is that contract in the records of the District and in your possession?

A. We have it, yes. We have a record.

Q. Is it here in court today? A. Yes.

Mr. Ramsey: If counsel desires to put that contract into evidence at this time it might possibly shorten up the cross-examination here in regard to its contents.

Mr. Cheadle: In view of the scope of cross-examination permitted by your Honor, if agreeable to the Court and counsel I will proceed to put in other documentary evidence which lies behind that contract about which counsel contends.

Mr. Ramsey: Our position frankly is that the whole [46] thing is one transaction.

The Court: Yes, I think it should be put in, perhaps, if you wish to reserve the rest of your cross-examination.

Mr. Ramsey: I do, if the Court please, and at this time I will permit counsel to introduce such other documents as he desires.

Further Direct Examination

By Mr. Cheadle:

(Whereupon, minutes of directors' meeting held March 9, 1943, was marked Petitioner's Exhibit No. 3 for identification.)

(Testimony of R. S. Reierson.)

Q. Mr. Reierson, I hand you what has been marked for identification number 3, and ask you to state what it is?

A. Minutes of the special meeting of the board of directors of the Priest Rapids Irrigation District held on March 9, 1943, held at the office of Moulton & Powell in Kennewick, March, 1943.

Mr. Cheadle: I offer in evidence as petitioner's Exhibit 3 what has been marked for identification as number 3 and identified by the witness.

Mr. Ramsey: No objection.

The Court: It may be admitted.

(Whereupon, petitioner's Exhibit No. 3 for identification was admitted in evidence.)

PETITIONER'S EXHIBIT No. 3

Minutes of the Special Meeting of the Board of Directors of the Priest Rapids Irrigation District Held at the Office of Moulton & Powell in Kennewick, Washington, on March 9, 1943.

There were present at this meeting the following:

R. S. Reierson, President
B. Salvini, Director
J. H. Evett, Director
Jos. W. Grell, Secretary
M. M. Moulton, Attorney.

This meeting was called by the President of the Board of Directors for the purpose of discussing

(Testimony of R. S. Reierson.)

with the Board and Mr. Moulton the various means, ways and steps to be taken to fully protect the rights and interests of the Priest Rapids Irrigation District as well as the individual rights and interests of the land owners and water users under the project during the purchasing, acquiring or condemnation by the Army Engineers of the interests of the parties named.

After a full and lengthy discussion, a motion was made by Director Evett that the Attorneys known by the firm name of Moulton & Powell of Kennewick, Washington, be employed by the Priest Rapids Irrigation District to represent the Board of Directors in the settlement of matters concerning the purchase by the Army Engineers of the properties of the Priest Rapids Irrigation.

The motion was seconded by Director Salvini, was placed to a vote of the Directors, who, in return, approved of the motion by a unanimous vote, and is thereby duly passed.

There being no further business to come before the Board, the meeting was duly adjourned.

/s/ R. S. REIERSON,
President.

/s/ B. SALVINI,
Director.

/s/ J. H. EVETT,
Director.

(Testimony of R. S. Reierson.)

Attest:

/s/ JOS. W. GRELL,
Secretary.

1/5/50.

(Whereupon, minutes of meeting held June 10, 1943, was marked [47] petitioner's Exhibit No. 4 for identification.)

(Whereupon, minutes of meeting held September 16, 1943, was marked petitioner's Exhibit No. 5 for identification.)

Q. I hand you, Mr. Reierson, what has been marked as identification number 4, and ask you to state to the Court what it is?

A. It's the minutes of the continued regular meeting of the Board of Directors of the Priest Rapids Irrigation District held at its office in White Bluffs on June 10, 1943.

Q. I also next hand you, Mr. Reierson, what has been marked as petitioner's identification 5, and ask you to state what it is?

A. Minutes of a special meeting of the board of directors of the Irrigation District held at the office of the Richland Irrigation District September 16, 1943.

Mr. Ramsey: What's the date of that?

Mr. Cheadle: September 16. I'll offer in evidence as petitioner's Exhibit No. 4 what has been marked as identification number 4.

(Testimony of R. S. Reierson.)

Voir Dire Examination

By Mr. Ramsey:

Q. May I inquire of the witness who was the Secretary of the District on the 10th day of June, 1943? A. Joe Grell. [48]

Q. Well, may I further inquire why this so-called resolution or minutes of meeting was not attested by the secretary under his seal?

A. I suppose he overlooked it.

Q. May I inquire whether these minutes were actually prepared on the date that they purport to be prepared, June 10, 1943?

A. I suppose they were. I'm not prepared to say those—

Q. Well, do you know when they were prepared?

A. Pardon?

Q. Do you know when they were prepared?

A. He took the minutes of the meeting.

Q. Well, do you know who prepared these?

A. Joe Grell; he was secretary.

Q. This was done by Joe Grell?

A. Yes, he was at the meeting.

Q. Well, was this typewritten copy of the minutes prepared by Joe Grell? A. Yes.

Q. And do you know about when? I'm not asking for the exact date.

A. He prepared his minutes usually the next day, from his notes.

(Testimony of R. S. Reierson.)

Q. Well, do you know whether that was followed in this case or not? [49] A. Pardon?

Q. Do you know whether that was followed in this case or not? A. I presume so.

Q. Well, frankly, Mr. Reierson, what I'm trying to get at is this: We have something here that purports to be the minutes of the meeting of the board of directors; it has typed in at the top a date; it has been signed by the members of the board of directors; it has not been attested by the secretary; it's not under the seal of the district; I'm not trying to raise any technical objection here, but I do want to know when these signatures were placed on this document.

A. The signatures would be submitted by the board at the next meeting; the minutes would be read at the next meeting and signed by the board of directors.

Q. Do you know, Mr. Reierson, that these signatures were appended to this instrument at the next meeting of the board of directors following the date that appears at the top, June 10, 1943?

A. I didn't understand your question.

Q. Do you know that these signatures of the board of directors were placed on this document at the next meeting of the board of directors following the date appearing at the top of the instrument, June 10, 1943? A. I am positive, yes. [50]

Mr. Ramsey: No objection.

The Court: It will be admitted.

(Testimony of R. S. Reierson.)

(Whereupon, petitioner's exhibit No. 4 for identification was admitted in evidence.)

PETITIONER'S EXHIBIT No. 4

Continued Regular Meeting of the Board of Directors of the Priest Rapids Irrigation District Held at Its Office at White Bluffs, Washington, June 10, 1943.

This meeting was called by the President for the purpose of meeting with Moulton & Powell. Those present at the meeting were:

R. S. Reierson, President
B. Salvini, Director
J. H. Evett, Director
Jos. W. Grell, Secretary
Mark M. Moulton, Attorney
Charles Powell, Attorney

Moulton & Powell, Attorneys for the District, wished to gather certain information for the completion of the brief to be presented to Judge Schwellenbach. This brief was to be presented to the Judge at the same time that the attorneys for the Army Engineers presented theirs.

A discussion of ways and means of paying the attorney fees to Moulton & Powell was discussed and it was decided that it would be agreeable to both the District and the Attorneys to make a payment of \$1000.00 in cash and a payment of \$1000.00

(Testimony of R. S. Reierson.)

in District Warrants. The total amount of \$2000 being the amount required by Moulton & Powell to prepare the legal requirements of the District up to the time of condemnation proceeding, should such a step become necessary.

There being no other business before the Board to be taken care of at this time the meeting was continued by the president to June 14th.

/s/ R. S. REIERSON,
President.

/s/ B. SALVINI,
Director.

/s/ J. H. EVETT,
Director.

Attest:

.....
Secretary.

1/5/50.

Mr. Cheadle: We offer in evidence as the petitioner's Exhibit Number 5 the paper marked as identification 5.

Mr. Ramsey: This is objected to as not having anything to do with the attorney fees in the particular matter that is before the Court.

Mr. Cheadle: If you'll permit, I'll ask——

The Court: Are you offering 5 now?

Mr. Cheadle: Yes, your Honor. In response to the objection, if permitted I will ask another question or two on voir dire.

(Testimony of R. S. Reierson.)

Q. (By Mr. Cheadle): Mr. Reierson, number 5, being that which you identified as the minutes of September 16, 1943, and which referred to the Priest Rapids Irrigation District splitting expenses on some litigation coming up, did that have—was that groundwork, according to your recollection, which led to the District's passing a resolution authorizing a \$750.00 payment on expenses?

Mr. Ramsey: Objected to, if the Court please, for the reason already stated, as to this question. We're confronted here with the matter of what constitutes a reasonable attorney fee in the matter of the Priest Rapids [51] Irrigation District case. Now, if the District wanted to go out and pay some money on some private individuals' cases, I don't know what that's got to do with the attorney fee in this particular case.

The Court: I'll overrule the objection.

Mr. Cheadle: We're entirely agreeable with that, except that Mr. Ramsey in his brief filed makes reference to the \$750.00 expenses. We're happy at this time to withdraw—

Mr. Ramsey: Well, I don't know that if it can be considered as being part of the expenses it's properly in there.

The Court: Well, we'll admit it for that purpose, then. Is there any objection to 5? That's the one you're discussing now. Does this question pertain to that?

Mr. Cheadle: You have no objection to it if it's

(Testimony of R. S. Reierson.)

admitted for the purpose of expenses, is that correct?

Mr. Ramsey: I don't concede that it has anything to do with proper expenditures, but I won't object to its introduction.

(Whereupon, petitioner's Exhibit No. 5 for identification was admitted in evidence.)

PETITIONER'S EXHIBIT No. 5

Minutes of the Special Meeting of the Board of Directors of the Priest Rapids Irrigation District Held at the Office of the Richland Irrigation District on Sept. 16th, 1943.

There were present at the meeting:

R. S. Reierson, President

B. Salvini, Director

J. H. Evett, Director

Jos. W. Grell, Secretary

Chas. Powell, Attorney

The Board of Directors and Secretary of the Richland Irrigation District.

B. Salvini made a motion that the White Bluffs Irrigation District share half of the costs of the case of the two districts coming up for trial in the Federal Court in Yakima. Motion seconded by Evett and carried.

(Testimony of R. S. Reierson.)

There being no other business, the meeting adjourned.

/s/ R. S. REIERSON,
President.

/s/ B. SALVINI,
Director.

/s/ J. H. EVETT,
Director.

Attest:

.....,
Secretary.

1/5/50.

(Whereupon, resolution dated Sept. 28, 1943, was marked petitioner's Exhibit No. 6 for identification.) [52]

Q. (By Mr. Cheadle): I'm now inquiring in regard to identification Number 6.

A. This is a resolution passed by the Board of directors authorizing the payment or advancement of \$750.00 to Moulton & Powell for the payment of necessary expenses in connection with the trial.

Q. What date does it bear?

A. It's dated on the 28th day of September, 1943.

Q. It is a resolution of the District board, is it?

A. Yes, a resolution of the District board.

Mr. Cheadle: We offer in evidence as petitioner's Exhibit Number 6 what's been marked identification 6.

(Testimony of R. S. Reierson.)

Mr. Ramsey: No objection with the understanding that it's admitted for the purpose of the so-called cost bill.

Mr. Cheadle: We're content to have it admitted, your Honor, for that limited purpose.

The Court: It will be admitted.

(Whereupon, petitioner's Exhibit No. 6 for identification was admitted in evidence.)

PETITIONER'S EXHIBIT No. 6

Resolution

Whereas, the United States has brought action to condemn all the property in the Priest Rapids Irrigation District and the said district is a party thereto and it is necessary to protect the value of the district properties and that said action be contested, and

Whereas, the expenditure of costs is necessary in the proper preparation and trial of the case and the attorneys, Moulton & Powell, should be paid \$750.00 to be used in the necessary expenses of the preparation, trial and appeal and further sums paid as required, now

Therefore, Be It Resolved that the Board of Directors of the Priest Rapids Irrigation District pay Moulton & Powell \$750.00 to be used in the payment of the items above listed, which expenses are recognized to be for a proper District purpose.

(Testimony of R. S. Reierson.)

Dated at White Bluffs, Washington, this 28th day of September, 1943.

/s/ R. S. REIERSON,
President.

/s/ B. SALVINI,
Director.

/s/ J. H. EVETT,
Director.

Attest:

/s/ JOS. GRELL,
Secretary.

1/5/50.

[Marginal Note]: Write minutes for same.

(Whereupon, minutes of continued meeting held October 18, 1943, was marked petitioner's Exhibit No. 7 for identification.)

(Whereupon, letter to Moulton & Powell dated October 18, 1943, was marked petitioner's Exhibit No. 8 for identification.) [53]

Q. I hand you what's been marked identification number 7, and ask you to state what it is?

A. Minutes of the continued meeting of the 5th of October held at the office of the Priest Rapids Irrigation District, at their office in White Bluffs, October 18, 1943.

Q. I now hand you what has been marked

(Testimony of R. S. Reierson.)

exhibit for identification number 8, and ask you to state what it is?

A. It's a letter addressed to Moulton & Powell dated on October 18, 1943, signed by the Secretary, J. W. Grell.

Q. Secretary of the—

A. Irrigation District.

Mr. Cheadle: I offer as petitioner's Exhibit Number 7 what's been marked identification 7.

Mr. Ramsey: I don't see the purpose of either of these exhibits; however, if counsel can show what useful purpose they serve I probably wouldn't object to them.

Mr. Cheadle: It will be our position, your Honor, in connection with testimony to come later, that they have bearing on the first contract.

The Court: May I see them, please?

Mr. Cheadle: Number 7 is the only one offered. I will offer number 8 at the same time; they bear on the same matter.

The Court: Well, you've offered them; I think I'll [54] reserve ruling until you do connect them up, since an objection is made to them, at least as to their being relevant here.

(Whereupon, agreement dated October 30, 1943, was marked petitioner's Exhibit No. 9 for identification.)

Q. Handing you, Mr. Reierson, what's been marked for identification number 9, I ask you to state what it is?

(Testimony of R. S. Reierson.)

A. That is an agreement entered in on the 30th day of October, 1943, between the Priest Rapids Irrigation District and Moulton & Powell.

Mr. Cheadle: I offer in evidence petitioner's number 9, your Honor, the ruling having been reserved, as I understand it, on 7 and 8.

The Court: Yes, on 7 and 8.

Mr. Ramsey: No objection.

The Court: Number 9 will be admitted, then.

(Whereupon, petitioner's Exhibit No. 9 for identification was admitted in evidence.)

PETITIONER'S EXHIBIT No. 9

This Agreement entered into this 30th day of October, 1943, by and between Priest Rapids Irrigation District, referred to herein as "District" and Moulton & Powell, attorneys at law, referred to herein as "Attorneys," Witnesseth:

District has, pursuant to Resolution heretofore passed by the Board of Directors, employed Moulton & Powell to represent District in all matters in which the District may be interested or concerned in the proceedings brought by the United States for the condemnation of land within the District of which a large area is owned by the District and to represent District in all matters in connection with said proceedings in which the property of the District as a whole, may be involved. As compensation for their services rendered in connection with

(Testimony of R. S. Reierson.)

said litigation, the sum of \$2000.00 is to be paid at this time. It is further understood by District that in the rendition of said services it has been necessary and will be necessary for Attorneys to incur expenses on behalf of the District in a substantial amount and District now agrees to pay to Attorneys \$750.00 at this time to be used by Attorneys in the payment of expenses necessarily incurred in said litigation and not otherwise.

Attorneys agree to render to District all legal services necessary in the protection of District's interest as a property owner in the District and as the owner of District instrumentalities being taken by the Government and to employ such additional counsel as will be necessary, at their own expense. Attorneys further agree that they will use the aforesaid amount of \$750.00 for the payment of expenses heretofore incurred and to be incurred in handling the litigation referred to herein and not otherwise, and that they will account to District for all expenditures made by them on account of such expenses. Attorneys further agree that they will accept the aforesaid amount of \$2000.00 as full compensation for all services rendered by them as well as services to be rendered by them in connection with said litigation except that in the event that services not heretofore contemplated shall be required of Attorneys, such additional compensation will be paid as the Board of Directors of District may deem proper and not otherwise.

(Testimony of R. S. Reierson.)

Dated this 30th day of October, 1943.

/s/ R. S. REIERSON,

/s/ B. SALVINI,

/s/ J. H. EVETT,

Directors, Priest Rapids
Irrigation District.

MOULTON & POWELL,

By /s/ M. M. MOULTON.

I, Joseph Grell, Secretary of Priest Rapids Irrigation District, Certify that the foregoing is an executed duplicate contract, the executed original of which is now on file as a part of the records and files of Priest Rapids Irrigation District and is in my custody as Secretary of said District.

[Seal] /s/ JOSEPH GRELL,
 Secretary.

1/5/50

(Testimony of R. S. Reierson.)

(Whereupon, minutes of special meeting held August 23, 1946, was marked petitioner's Exhibit No. 10 for identification.)

Q. I hand you, Mr. Reierson, what has been marked for identification number 10, and ask you to state what it is?

A. That's the minutes of a special meeting of the board of [55] directors of the Priest Rapids Irrigation District held at 107 South 11th Avenue, Yakima, Washington, August 23, 1946.

Mr. Cheadle: I offer in evidence as Petitioner's Exhibit Number 10 what's been marked identification number 10.

Mr. Ramsey: No objection.

The Court: Admitted.

(Whereupon, petitioned's Exhibit No. 10 for identification was admitted in evidence.)

PETITIONER'S EXHIBIT No. 10

Special Meeting of the Board of Directors of the Priest Rapids Irrigation District Held at 107 So. 11th Avenue, Yakima, Wash., on Aug. 23rd, 1946.

There were present at the meeting:

B. Salvini, President.

J. H. Evett, Director.

Chas. Powell, Attorney.

R. S. Reierson, Secretary.

(Testimony of R. S. Reierson.)

The minutes of the previous meeting were read and approved.

The special meeting was called by order of the President of the board. The Directors waived written notice of special meeting.

The Secretary reported that he had received notice from Mr. Spencer owner of the office at 106 No. 2nd St., that the P.R.I. District should move their records from his office. Complying with this request Mr. Salvini and Mr. Reierson moved the records and equipment to 107 So. 11th Ave., on June 4, 1946.

On Feb. 15, 1946, Mr. Chas. Powell conferred with Mr. Salvini and Mr. Reierson regarding an action in Benton County Superior Court to compel the County Auditor to issue warrants. Since Mr. Powell was not able to sue County he was authorized to secure the services of J. K. Cheadle.

By motion duly made and passed the above-mentioned acts of the Secretary and President of the board were approved.

A motion made by J. H. Evett and seconded by B. Salvini; that the board enter into a new contract with Moulton and Powell. A copy of contract was read and filed with the Secretary. The motion was passed by unanimous vote.

A motion was made and duly passed ordering the Secretary to set up a budget for 1946, and to transfer any balance remaining in the 1945 Fund to the 1946 Fund.

(Testimony of R. S. Reierson.)

The following bills were ordered paid:

J. H. Evett	\$13.00
B. Salvini	\$ 5.00
R. S. Reierson	\$ 9.61
Moulton & Powell	\$45.86
<hr/>	
Total.....	\$73.47

/s/ B. SALVINI,
President.

/s/ J. H. EVETT,
Director.

[Seal] /s/ R. S. REIERSON,
Secretary.

1/5/50

(Whereupon, copy of decree case No. 8035 was marked petitioner's Exhibit No. 11 for identification.)

Q. I hand you, Mr. Reierson, what's been marked for identification as number 11, and ask you to state what it is?

A. It's an action brought from the Superior Court of the State of Washington, in and for Benton County, No. 8034.

Q. 8034, or 8035?

A. 8035, C. I. Wright and Mamie Wright, husband and wife, versus—

Q. Does it bear a caption indicating what the particular paper is? A. No. 8035, Decree.

(Testimony of R. S. Reierson.)

Q. Does it have a date indicating the date it was entered?

A. Done in Open Court on the 1st day of August, 1946. [56]

Q. Does it bear a certificate of the clerk of the Benton County court?

A. Dated on the 4th day of January, 1950, Fred D. Kemp, clerk.

Mr. Cheadle: I offer as petitioner's Exhibit number 11 what has been marked as identification number 11.

Mr. Ramsey: No objection.

The Court: It will be admitted.

(Whereupon, petitioner's Exhibit No. 11 for identification was admitted in evidence.)

(Testimony of R. S. Reierson.)

PETITIONER'S EXHIBIT No. 11

In the Superior Court of the State of Washington,
in and for Benton County

No. 8035

C. I. WRIGHT and MAMIE WRIGHT, husband
and wife, B. SALVINI, J. H. EVETT, and
PRIEST RAPIDS IRRIGATION DIS-
TRICT, a municipal corporation of the State
of Washington,

Plaintiffs,

vs.

HARLEY E. CHAPMAN, County Auditor of
Benton County, Washington, and C. W. NES-
SLY, County Treasurer of Benton County,
Washington,

Defendants.

DECREE

The above-entitled cause having come on for trial
on the 12th day of July, 1946, the plaintiffs being
represented by their attorney, J. K. Cheadle, and
the defendants by their attorney, Andrew Brown;
said cause, pursuant to stipulation of counsel, hav-
ing been consolidated for purposes of trial with
the action of Dietrich, et al., v. Chapman, et al., No.
7987; and A. E. Taylor, successor of Harley E.
Chapman as County Auditor of Benton County, on
motion made in open court and pursuant to consent
of his attorney, appearing for him, having been

(Testimony of R. S. Reierson.)

Petitioner's Exhibit No. 11—(Continued)

substituted for said Harley E. Chapman as a party defendant; and a suggestion of want of jurisdiction of this Court having been presented by the Suggestion of Interest filed herein by the United States of America on May 1, 1946, and an analogous question of jurisdiction having been decided previously in favor of the jurisdiction of this Court by this Court's denial on April 11, 1946, of the motion to quash and dismiss filed in said action No. 7987 by the United States of America under special appearance for that purpose, and the jurisdiction of this Court in the above-entitled cause having been upheld by the denial of the motion for appointment of trustee or receiver and for restraining order filed by the United States of America on May 6, 1946, in the United States District Court for the Eastern District of Washington in United States v. Alberts, et al., Civil No. 128, and denied by the order of said Court entered on June 26, 1946, and this Court having decided on July 12, 1946, in conformance with said prior decisions and contrary to said suggestion, that this Court has jurisdiction, and accordingly having proceeded to trial on the merits; and upon said trial it appearing to the Court, and being so found by the Court, that the facts are as alleged in the complaint and in particular that the defendants, although acting in good faith, have threatened to refuse to issue and pay warrants on the funds of the Priest Rapids Irrigation District on the basis of vouchers approved by the plaintiffs B. Salvini and J. H.

(Testimony of R. S. Reierson.)

Petitioner's Exhibit No. 11—(Continued)

Evett; and the court, upon consideration of the facts and the applicable law and being fully advised in the premises, having concluded that the plaintiffs are entitled to a decree granting relief against the defendants and making provisions for further appropriate proceedings;

Now Therefore, it is Hereby Ordered, Adjudged and Decreed: That plaintiffs B. Salvini and J. H. Evett are de facto directors of the Priest Rapids Irrigation District and that, until further order or decree of this Court as hereinafter provided for, said plaintiffs shall continue to function as directors of said district and in particular shall do any and all things necessary to the defense by said district against the petitioner in the condemnation action of United States of America v. Alberts, et al., Civil No. 128 in the United States District Court for the Eastern District of Washington, and necessary to protect otherwise the interests of said district; and that pursuant to vouchers approved by said de facto directors, the County Auditor of Benton County, Washington, shall issue warrants, and the County Treasurer of Benton County, Washington, shall pay said warrants, in the same manner and with the same effect as provided by the laws of the State of Washington with respect to vouchers approved by irrigation district directors.

It is Further Ordered, Adjudged and Decreed that this Court retains jurisdiction of this cause for appropriate supervision of the administration of said irrigation district and for further appropriate

(Testimony of R. S. Reierson.)

Petitioner's Exhibit No. 11—(Continued)
proceedings directed toward dissolution of said district and distribution of the assets of said district.

It is Further Ordered, Adjudged and Decreed that any award in the condemnation action, United States of America v. Clements P. Alberts, et al., Civil No. 128, which may be ordered by the District Court of the United States for the Eastern District of Washington to be paid to the Priest Rapids Irrigation District, shall upon receipt by said district be paid into this Court, to be paid out upon order of this Court after further appropriate proceedings.

It is Further Ordered, Adjudged and Decreed that within a period of sixty days after final decision in said condemnation action, including final disposition of any appeal or review proceedings therein, said de facto directors shall report to this Court the final decision in said condemnation action and shall suggest, by petition to this Court, such proceedings directed toward dissolution of the Priest Rapids Irrigation District, appointment of trustees and distribution of the assets of said district as shall be deemed by them to be appropriate.

Done in open court this 1st day of August, 1946.

/s/ TIMOTHY A. PAUL,
Judge of the Superior Court.

Presented by:

/s/ J. K. CHEADLE,
Attorney for Plaintiffs.

(Testimony of R. S. Reierson.)

Petitioner's Exhibit No. 11—(Continued)

Approved as to Form:

/s/ ANDREW BROWN,
Attorney for Defendants.

Filed for record Aug. 8, 1946.

In the Superior Court of the State of
Washington for Benton County

No. 8035

C. I. WRIGHT, et ux., B. SALVINI, J. H. EVETT
and PRIEST RAPIDS IRRIGATION DIS-
TRICT, a Municipal Corporation of the State
of Washington,

Plaintiff,

vs.

HARLEY E. CHAPMAN, County Auditor of
Benton County, Washington, and C. W. NES-
SLY, County Treasurer of Benton County,
Washington,

Defendant.

CERTIFICATE

I, Fred D. Kemp, County Clerk, and by virtue of
the laws of the State of Washington ex-officio Clerk
of the Superior Court of the State of Washington,
in and for said County, do hereby certify that the
annexed and foregoing is a true and correct copy
of the Decree, filed for record August 8, 1946, in

(Testimony of R. S. Reierson.)

Petitioner's Exhibit No. 11—(Continued)
the above-entitled action, as the same now appears
on file and of record in my office.

In Testimony Whereof, I have hereunto set my
hand and affixed the seal of said Court this 4th day
of January, 1950.

FRED D. KEMP,
Clerk.

[Seal] By /s/ BESS ROYER,
Deputy.

Mr. Cheadle: That concludes the further documentary evidence which we wished to offer.

The Court: All right, you may proceed with your cross-examination.

Cross-Examination

By Mr. Ramsey:

Q. Now, Mr. Reierson, referring to petitioner's Exhibit 9, being the agreement between the Board and Moulton & Powell entered into on the 30th day of October, 1943, "District has, pursuant to resolution heretofore passed by the board of directors, employed Moulton & Powell to represent District in all matters in which the District may be interested or concerned in the proceedings brought by the United States for the condemnation of land within the District of which a large area is owned by the District and to represent District in all matters in connection with said proceedings in which the prop-

(Testimony of R. S. Reierson.)

erty of the District [57] as a whole, may be involved. As compensation for their services rendered in connection with said litigation, the sum of \$2000.00 is to be paid at this time. It is further understood by District that in the rendition of said services it has been necessary and will be necessary for attorneys to incur expenses on behalf of the District in a substantial amount and District now agrees to pay to attorneys \$750.00 at this time to be used by attorneys in the payment of expenses necessarily incurred in said litigation and not otherwise. Attorneys agree to render to District all legal services necessary in the protection of District's interest as a property owner in the District and as the owner of District instrumentalities being taken by the government and to employ such additional counsel as will be necessary, at their own expense. Attorneys further agree that they will use the aforesaid amount of \$750.00 for the payment of expenses heretofore incurred and to be incurred in handling the litigation referred to herein and not otherwise, and that they will account to District for all expenditures made by them on account of such expenses. Attorneys further agree that they will accept the aforesaid amount of \$2000.00 as full compensation for all services rendered by them as well as services to be rendered by them in connection with said litigation except that in the event that services not heretofore [58] contemplated shall be required of attorneys, such additional compensation will be paid as the board of directors of District may deem

(Testimony of R. S. Reierson.)

proper and not otherwise." Now, this contract was entered into with Moulton & Powell on the 30th of October, 1943, wasn't it? A. That's right.

Q. And it was the intent of the District at that time to employ Moulton & Powell as its attorneys to handle all of its litigation growing out of the condemnation case entitled United States vs. Clements P. Alberts, civil number 128, in this Court?

Mr. Cheadle: May I have the question read back?

(Whereupon, the reporter read the pending question.)

The Court: Did you understand the question?

A. Yes. The answer is yes.

Q. The answer was yes. Now, under this contract Moulton & Powell agreed to do this work and to employ such other counsel as might be necessary for the sums paid, unless the district at its option should later feel that they should pay an additional amount, is that correct, for unexpected work that might develop?

A. Up to a certain time, yes.

Q. Well, there's no time limit set in your contract here, if you'd like to look at it.

A. We thought it preliminary, up until condemnation time. [59]

Q. I hand you petitioner's Exhibit 9, and ask you to look at it and see if you find any such limitation.

(Testimony of R. S. Reierson.)

A. It doesn't provide in here, no. I'm referring to a preliminary resolution stating that—

Q. Well, let's stay off the resolution. This contract will have to stand by itself.

Mr. Cheadle: Your Honor, if counsel will permit, he now suggests that the contract will have to speak for itself, however, counsel himself has been interrogating this witness outside the terms of the contract. Counsel can let the documents speak for themselves, or can ask questions going outside the contract—

The Court: I think we can decide those legal questions when we get to them. Proceed.

Q. (By Mr. Ramsey): Now, what consideration was there for the entering into of this contract of the 30th day of August, 1946, other than that recited in the second paragraph of the contract? And before you answer the question, I'll read you that paragraph: "Whereas, an action is now pending in the United States District Court for the Eastern District of Washington, Southern Division, involving condemnation of property of the District, and Moulton & Powell have been heretofore employed to protect the interests of the District, and certain payments have been made to them under said contract; and whereas it has [60] developed that said litigation is much more involved and the likelihood of appeal is much greater than initially contemplated"; was there any consideration on the part of the District for the entering into of this

(Testimony of R. S. Reierson.)

contract other than the consideration for the original contract?

Mr. Cheadle: If your Honor please, I object. The question calls for legal conclusion of the witness.

Mr. Ramsey: I don't think so; I think it calls for a factual answer.

The Court: I'll overrule the objection; you've asked if there was any consideration other than that stated—

A. May I ask if that's the second—

Q. I hand you now petitioner's Exhibit 1. That would be this paragraph here.

A. Now, I get your question on that—

Q. Do you understand the question?

A. There was a great deal of litigation involved.

The Court: Perhaps you'd better read the question to the witness.

(Whereupon, the reporter read the question as follows: "Was there any consideration on the part of the District for the entering into of this contract other than the consideration for the original contract?"')

A. Well, the consideration is stated there, the amount of [61] \$2,000.00.

Q. No, I don't believe you understand me. I'll rephrase the question. You had hired Moulton & Powell to represent the District in this condemnation proceeding? A. Yes.

Q. You had paid them \$2,000.00 and advanced

(Testimony of R. S. Reierson.)

\$750.00 in costs. Under that contract they agreed to do all of the work, legal work that might be necessary for the District and to employ any other associate counsel that might be necessary for that fee as paid to them, unless as stated in the final paragraph of the contract of October 30, 1943, "except that in the event that services not heretofore contemplated shall be required of attorneys, such additional compensation will be paid as the Board of Directors of District may deem proper and not otherwise." Now you come along in August 30 of 1946 and enter into this second contract whereby you agree to pay them certain contingent attorney fees which now amount to nearly \$79,000.00. What consideration was there for entering into this second contract on the part of the District?

A. There was a great deal of work involved and coming up that required attorneys' services for probably a long time. We had to take that into consideration.

Q. You had hired Moulton & Powell to take care of that very work, hadn't you? [62]

A. Up to—

Q. Now just a minute; you're trying to vary the terms of your own contract here. There's no time limit set in your contract.

Mr. Cheadle: Again, your Honor, I object to counsel asking the witness questions and then seeking to brow-beat him with the contract.

Mr. Ramsey: I'm not trying to brow-beat; I'm

(Testimony of R. S. Reierson.)

just trying to find out what the consideration is for giving these men \$79,000.00.

Mr. Cheadle: He's sworn to tell the truth; let him tell the truth.

The Court: I'll ask the witness to state in his own words what he thinks it was, then if the Court feels the contract must be considered in its own words, I will do that.

A. It was our understanding that the first contract covered the litigations involved in the first case when we were attempting to determine the value of the irrigation assets to the various properties in the district.

Q. Well, now—

A. And up to that time, and that when it came to condemnation, a new contract would be on a contingent basis.

Q. Now, then, you speak of this first case. Are you referring now to the cases involving Wright and Parks, and was it [63] Deitrich, the first group of individually owned tracts that was tried before this court?

A. Those cases, yes, were selected as representative.

Q. Was it the intention of the District to hire an attorney and pay an attorney to handle the cases of these individual landowners?

A. It was, yes.

Q. Just what did the District expect to get out of it?

A. We wanted to find out, the Board of Direc-

(Testimony of R. S. Reierson.)

tors at that time felt that we should learn something, find out what the value of the non-irrigated assets were to the land in the District. We felt that it wasn't properly appraised.

Q. Well, now, just a minute. If any additional value had been added to the lands of these individual property owners by showing the value of the assets of the District, that would have gone to the individual property owners, not to the District, wouldn't it?

Mr. Cheadle: Your Honor, I strongly object to counsel presenting legally argumentative questions to this witness. They are precisely the same type as the government has presented to the courts throughout protracted litigation, and even to the Court of Appeals, and I submit that certainly this question calls for a legal conclusion; at any rate, government counsel has been contending throughout the years re the answer to that, and he contends [64] it is a legal conclusion.

Mr. Ramsey: I am intrigued that the witness knows what he's talking about, the District went out and hired attorneys for the individual land owners and paid them out of District funds.

The Court: Well, I'll overrule the objection.

Mr. Ramsey: Would you read that question, please?

(Whereupon, the reporter read the pending question.)

A. We felt—personally I felt that that was—

Q. Now, just a moment—

(Testimony of R. S. Reierson.)

The Court: I think he should be permitted to answer in his own way, Mr. Ramsey. What did you start to say?

A. That was a question that we were trying to find out, and it had to be determined. We didn't know.

Q. Well, what was the interest of the District in it, one way or the other?

A. We were interested in getting full value. We were representing the farmers, the board of directors were elected to serve the district.

Q. Well, did you hire the attorneys to represent all of the land owners in that District?

A. No, the District.

Q. Pardon?

A. To represent the District.

Q. But in this particular case you think you expended \$2700.00 [65] of District funds in order to furnish attorneys to some private land owners to determine a question that didn't mean one dime one way or another to the District as a District?

A. That wasn't our idea of it.

Q. Well, as a matter of fact, did the District stand to gain one dollar whichever way that question went, the District itself?

A. It added values to the lands.

Q. Well, those lands didn't belong to the District, did they?

A. Well, they owned certain lands.

Q. Yes, and it settled for them, so it wasn't an issue at all. I think that's all.

(Testimony of R. S. Reierson.)

Redirect Examination

By Mr. Cheadle:

Q. Mr. Reierson, on cross-examination counsel stated that he was intrigued about the District paying attorneys' fees with regard to the trials of these individual farms. Were or were those not test cases?

A. They were test cases representative of three classifications of land.

Q. Did or did not—

Mr. Ramsey: Now, if the Court please, I'm going to object to counsel going any further on developing this theory. If that was the purpose of the hiring of these attorneys, if that was what they were paid the money for, [66] then certainly their contract doesn't so state; in fact, it states positively the opposite; they're hired to represent the District in the matters arising in which the District was interested. Now I hardly think counsel should at this late date attempt to substitute for the contract a totally different understanding.

Mr. Cheadle: Your Honor, and again we are met by government counsel playing both ends against the middle. The government has contended that District properties were fully paid for in the awards made to individual farmers, and as the record will show, this three volume record on appeal, early in 1943 counsel for the Irrigation District did file a motion regarding sequence of trial, proposing that there be a separate trial regarding

(Testimony of R. S. Reierson.)

the District's own properties. Likewise will the printed record show in the reported words of Judge Schwellenbach in proceedings had in April of 1944, Judge Schwellenbach stated that it had been agreed, and he stated this further in his memorandum opinion of June 21, 1945, that it had been agreed in the summer of 1943 in what if this had been governed by Federal rules would have been deemed a pretrial conference, that there would be test cases selected at which time this novel and unique legal question, this novel and unique contention of the government, would be presented to the Court by way of offers of proof, and that Judge [67] Schwellenbach would overrule those offers of proof and appeals would be taken, and thus would be settled in that manner the question of compensation for the District owned properties. Those trials were held, as the printed record shows, in early October, and these minutes, your Honor, which we have introduced, in June 10, 1943, and later, in September, provided \$2,000.00 to Moulton & Powell for preparing a brief to be handed to Judge Schwellenbach at the same time the government would hand their brief, and it says further expenses would be required, and in the minutes of the September, 1943, meeting at which the Board authorized the \$750.00 they made an express finding in the last sentence that these are deemed expenses in the District's interests. They also hired Lloyd Wiehl, as is shown by one of those land owners' cases, yet here comes

(Testimony of R. S. Reierson.)

government counsel and says, "No, that isn't the situation."

The Court: I'm going to overrule the objection and hear the testimony and decide later what construction is to be put upon the contract, whether it should be construed as it appears to read, or in some other way. Has he answered the last question?

(Whereupon, the reporter read the last complete question and answer.)

Q. (By Mr. Cheadle): To your knowledge did the District or did [68] the District not pay any District funds for employment of any counsel with regard to any individual land owners other than those test cases tried in early October of 1943?

A. No.

Q. Mr. Reierson, you have identified the minutes of June 10, 1943, being exhibit number 4, the second paragraph of which reads: "A discussion of ways and means of paying the attorney fees to Moulton & Powell was discussed and it was decided that it would be agreeable to both the District and the attorneys to make a payment of \$1000.00 in cash and a payment of \$1000.00 in district warrants. The total amount of \$2000.00 being the amount required by Moulton & Powell to prepare the legal requirements of the District up to the time of condemnation proceeding, should such a step become necessary." I hand you again exhibit 4 which you may look at further if you care to, to refresh your mem-

(Testimony of R. S. Reierson.)

ory. Was that the same \$2000.00 recited in the October contract?

A. That's the same \$2000.00, yes.

Q. Handing you what has been admitted as petitioner's exhibit 9, I'll ask you to refer to one of the middle paragraphs where reference is made to the District's agreeing in addition to pay \$750.00, and ask you to read that and refresh your memory, and then I hand you also petitioner's exhibit number 6, being the resolution of the Board of [69] Directors of September 28, 1943, and I ask you whether the \$750.00 referred to is the same? A. That is.

Q. Do you know of your own knowledge, Mr. Reierson, whether the \$2000.00 to Moulton & Powell and the \$750.00 was or was not in fact paid by issuance of district warrants before October 30?

A. Yes, they were issued before.

Q. Were they not issued, in fact, on October 19?

A. Yes.

Q. And was not October 19 the same date—I beg pardon, was that not one day after the meeting at which the District board decided to accept Judge Schwellenbach's ruling so far as trying the issue out in those test cases was concerned?

A. The day before, yes.

Q. The day before, or day after?

A. Immediately following.

Q. Is it correct, Mr. Reierson, that the October 30 contract was a reducing to writing of the agreement reached with Moulton & Powell on June 10, 1943, and as reflected in the minutes of the Board's

(Testimony of R. S. Reierson.)

meeting of June 10, 1943? A. That is right.

Q. Did the District know what the situation was as to further litigation after Judge Schwellenbach's rulings in those [70] October trials?

A. No, we didn't know. The declaration of taking wasn't issued until 1944, sometime in April or May, and we had no knowledge of what proceedings would take place, at the time that we made this first contract.

Mr. Cheadle: That's all.

The Court: Any further questions?

Mr. Ramsey: No.

(Whereupon, the witness was excused.)

The Court: I think it's becoming apparent that we will not be able to finish this matter this afternoon. I didn't know we were going to relitigate the 1943 cases in this matter, but it is, I appreciate, of substantial importance to the attorneys here in this controversy, and I'm not inclined to try to hurry it through now. I thought if you have any attorneys here who would like to get away, and you wish to put them on out of order, then I'll adjourn until tomorrow morning, that is, adjourn this case.

Mr. Cheadle: We will, then, at this time, your Honor, at the suggestion of the Court, have Mr. Harold Shefelman take the stand.

HAROLD SHEFELMAN

called as a witness on behalf of the petitioning attorneys, being first duly sworn, testified as follows:

Direct Examination

By Mr. Cheadle:

Q. Will you state your name to the reporter?

A. Harold Shefelman.

Q. What is your occupation, Mr. Shefelman?

A. A lawyer.

Q. Where are you located?

A. In Seattle.

Q. How long have you been in practice there, Mr. Shefelman?

A. Since the summer of 1925.

Q. Does or does not your practice include work in municipal corporation law? A. It does.

Q. Would you state to the Court some indication of the percentage of your practice which involves municipal corporation law, approximate, of course?

A. Oh, I would just take a rough guess and say 20 per cent of my time.

Q. Have you been engaged frequently in litigation representing various and sundry sorts of municipal corporations of the state of Washington?

A. I have.

Q. So as to expedite, your Honor, I will ask a very brief question and let the witness relate, will you state to the Court so that the reporter may take it down the positions you have had in the American Bar Association, please?

(Testimony of Harold Shefelman.)

A. Well, I'm a member of the House of Delegates of the American Bar—I feel rather foolish—I've been a member [72] of the House of Delegates of the American Bar Association, a member of the Council of the section on Legal Education, am presently a member of the Council of Ten of the Section on Municipal Law, which operates the affairs of the Municipal Law Section.

Q. Have you not also been president of the Seattle Bar Association? A. I have.

Q. I hand you, Mr. Shefelman, petitioner's exhibit number 1.

A. Yes, I have seen this instrument before.

Q. You have examined that contract?

A. Yes, I have.

Q. At the request of Moulton & Powell and J. K. Cheadle? A. I have, sir.

Q. Will you please state to the Court your opinion whether that contract provides an unconscionable or unreasonable percentage of recovery as an attorneys' fee in the contingent event of recovery?

A. It certainly does not.

The Court: May I ask this question: Are you familiar in a general way, Mr. Shefelman, with the litigation that was contemplated when this contract was executed?

A. I might say, sir, that I have read through the District's brief in the Circuit Court of Appeals, which has an excellent statement of the facts, I judge; I have read [73] their affidavit detailing the work done, filed with this Court; I have read the

(Testimony of Harold Shefelman.)

authorities pro and con; I have really spent quite a few hours checking the record, and I have glanced through the record on appeal also.

The Court: I see; that's the only question I have to ask.

Q. (By Mr. Cheadle): Would you state to the Court whether in your opinion, in view of the character of this litigation, with a contingent fee contract being made before trial, whether the contingent compensation could have been somewhat higher than that provided in that contract and still have been reasonable?

A. Yes, I will answer in the affirmative and say that it could have been, and that in my judgment the fee arrangement set forth in this contract was a very reasonable arrangement.

Mr. Cheadle: Your Honor, I merely want to mention that in Mr. Shefelman's response to one of the Court's questions he stated he had examined an affidavit which he stated had been filed. I did send an executed affidavit, executed by myself, to Mr. Shefelman for his information; I have not filed it because I am here and prepared to testify; however, he has examined my sworn statement of the work we did.

A. I assumed it had been filed. [74]

The Court: It's one you furnished to him?

Mr. Cheadle: Correct. You may inquire.

Mr. Ramsey: No questions.

(Whereupon, the witness was excused.)

The Court: Do you have any other value witnesses or experts to wish to put on?

Mr. Cheadle: Yes, we have, your Honor; two others. They are from Yakima.

The Court: Well, I had in mind that unless it would seriously inconvenience them, I'd prefer to have it go over until morning, because I have three other matters to hear tonight, and it will run me rather late as it is. I think we should resume, however, at 9:30 in the morning, so I'll suspend this case until 9:30 and the court will take a five minute recess before proceeding.

(Whereupon, the Court took a recess in this case until Friday, January 6, 1950 at 9:30 a.m.)

January 6, 1950, 9:30 o'Clock A.M.

(All parties present and represented as before, and the hearing was resumed.)

The Court: Before we proceed, gentlemen, I feel that I may have been responsible for having the petitioners bring in all these expert witnesses, the lawyers here, because I indicated in a conference in chambers that it [75] might be well to have such supporting testimony. I wonder if we couldn't shorten this by stipulating that your other lawyers here would testify, in effect, as Mr. Shefelman did, if called. It doesn't seem to me there could be much question, on the basis where these lawyers testify, that is, under ordinary circumstances where there are normal relations between the parties, and no prior contract between them, there could be no question in my mind but what this

is a reasonable contingent fee contract considering the complex legal problems involved. I assume in a statement of the stipulation you could show who the lawyers are and in a general way the length of time they have been practicing and any positions in the bar associations that they have held. Do you think that that might be done?

Mr. Ramsey: Yes.

The Court: I think it might be fair to ask Mr. Ramsey at this time if he proposes to call any experts to testify that the contract is not a reasonable fee contract?

Mr. Ramsey: Yes, your Honor; well, let me put it this way: I do expect to call two experts to testify that in view of the earlier contract, that this is not a fair contract nor a reasonable contract.

The Court: Well, I'm just making the suggestion, gentlemen; you can do as you see fit about it.

Mr. Cheadle: We will so stipulate, your Honor. We [76] will assume, of course, that in the event it seems appropriate, we could on rebuttal if it appeared necessary then call our witnesses.

The Court: Yes, if the government brings in experts I certainly would permit you to bring experts in in rebuttal, if you care to do so, to testify in person.

Mr. Cheadle: I can state the stipulation in open court here to the reporter, and then if it's satisfactory in form to Mr. Ramsey he can agree to it.

The Court: Yes, I think that could be done, to save time.

Mr. Cheadle: At the suggestion of the Court the

petitioners stipulate that John Gavin, attorney of Yakima, Washington, a member of the Board of Governors of the Washington State Bar Association, and that V. O. Nichoson, attorney of Yakima, and president of the Washington State Bar Association, would if they were called upon to testify, testify to the same effect as did the witness for petitioners in yesterday's hearing, Mr. Harold Shefelman. If I may add, your Honor, to the statement, Judge Nichoson, V. O. Nichoson, we want the stipulation to show was on the bench for eight years and has practiced in Yakima since 1908.

The Court: Judge Nichoson was judge of the Superior Court of the State of Washington for Yakima County, is [77] that correct?

Mr. Cheadle: The Superior Court of the State of Washington for Yakima County.

The Court: Is that acceptable to you, Mr. Ramsey?

Mr. Ramsey: Yes.

The Court: All right, the Court will approve the stipulation as dictated into the record. You may proceed, then.

Mr. Cheadle: Your Honor, may I inquire if it is the desire of the Court that Mr. Powell and I take the stand and testify as to the work done here in this matter? I may state to the Court we had planned to do that this morning prior to putting on the testimony of Mr. Gavin and Mr. Nichoson, with a view to having before them a more elaborate statement of the work done in this case and the character of the proceedings, before they gave their

opinion testimony. That would have normally been done likewise with regard to Mr. Shefelman's testimony, and it was only due to the turn the proceedings took yesterday and Mr. Shefelman's desire to return to Seattle if at all possible that we put him on prior to Mr. Powell and I giving that testimony. In view of the stipulation I am wondering whether your Honor cares at this time, at any rate, to have such testimony from Mr. Powell and me?

The Court: Well, as I understand it, the purpose of [78] your proof is to show that this was a reasonable fee on a contingent contract basis; in other words, you're not attempting to prove the reasonableness of the fee on a quantum merit basis in the absence of any contract.

Mr. Cheadle: That is correct, your Honor, we are not.

The Court: It would seem to me that the test of whether or not a contingent fee contract is reasonable would be the services in reasonable contemplation at the time of the execution of the contract rather than the work that was actually done, but so far as I am concerned I am fairly well acquainted, I think, with the work you gentlemen did, and I wouldn't require any testimony, but if you wish to complete your record by putting it in the record, I wouldn't want to stand in your way of doing that, of course.

Mr. Cheadle: We will put Mr. Powell on for some testimony, your Honor. We may complete the record with some documentary testimony.

CHARLES L. POWELL

called as a witness on behalf of the petitioning attorneys, being first duly sworn, testified as follows:

Direct Examination

By Mr. Cheadle:

Q. State your name to the reporter, please?

A. Charles L. Powell.

Q. You are one of the petitioners in this petition for payment [79] of attorneys' fees?

A. Correct.

Q. And you have been since this condemnation action was filed one of counsel for the Priest Rapids Irrigation District? A. Yes.

(Whereupon, certified copies of financial statements of Priest Rapids Irrigation District were marked petitioner's Exhibit No. 12 for identification.)

Q. I hand you, Mr. Powell, a group of sheets, each of them being on the same printed form, but having blanks filled in in pencilled figures, and ask you to identify them further.

A. The identification 12 consists of certified copies of financial statements of the Priest Rapids Irrigation District, that is, monthly financial statements for months ending February 28, 1943, to December 31, 1944, inclusive, showing the outstanding indebtedness and the payment of the indebtedness during each month.

Q. Have you examined these sheets?

(Testimony of Charles L. Powell.)

A. Yes, I have.

Q. Were they obtained from the county treasurer under his seal at your request? A. Yes.

Mr. Cheadle: We offer these in evidence as petitioner's Exhibit Number 12. [80]

Mr. Ramsey: May I ask what the purpose of the exhibit is?

Mr. Cheadle: The purpose is—

The Court: I suppose to show—pardon me, go ahead, you may state it.

Mr. Cheadle: The purpose of the exhibit is to show that the financial condition of the Priest Rapids Irrigation District at the outset of this litigation, particularly in the latter part of 1943, was such that any arrangement it might have with counsel had to be contingent. These sheets also show, your Honor, that after the United States took the properties—in other words, they show that at the latter part of 1943 some \$11,000.00 was paid by the Priest Rapids Irrigation District in redemption of \$8,000.00 of bonds and some \$3,000.00 of interest on bonds, and show further that in the year of 1944 interest on bonds in the approximate amount of two or three thousand dollars was paid by the Priest Rapids. In other words, Priest Rapids District funds were very substantially exhausted after the government moved in, due to the fact that the Priest Rapids District continued even after it had lost physical possession of the properties to pay its bonded indebtedness and interest thereon, and we think that of course has bearing on the other peti-

(Testimony of Charles L. Powell.)

tion yet to be heard regarding the District's expenses, and we feel that it also has some [81] bearing on the matter of this attorneys' fee, particularly in view of objections which we have only by way of government counsel's brief.

The Court: Do you object to the document, Mr. Ramsey?

Mr. Ramsey: If the document is offered for the purpose of showing the financial condition of the District and the necessity for a contingent fee contract, there is no objection.

The Court: Well, I understand that was the purpose of it.

Mr. Cheadle: Yes.

The Court: Admitted.

(Whereupon, petitioner's Exhibit No. 12 for identification was admitted in evidence.)

(Whereupon, three vouchers were marked petitioner's Exhibit No. 13 for identification.)

Q. (By Mr. Cheadle): I hand you, Mr. Powell, three sheets which have been marked identification number 13, and ask you to identify them.

A. Identification 13 consists of three sheets, being duplicate originals of vouchers of the Priest Rapids Irrigation District, two dated June 12, 1943, and one dated September 29, 1943.

Q. Would you state the amounts of those dated June 12, I [82] believe you said, 1943?

A. Each one of the two vouchers dated June 12,

(Testimony of Charles L. Powell.)

1943, are for \$1,000.00, signed by M. M. Moulton, and recite on the body of the voucher the purpose for which the payment was requested.

Q. And the middle one for \$750.00 bears what date?

A. September 29, 1943, being for \$750.00 advance on expenses as per resolution.

Mr. Cheadle: We offer identification 13 as petitioner's Exhibit 13.

Mr. Ramsey: May I ask the purpose of this identification?

Mr. Cheadle: The purpose of this identification, your Honor, is to show that the \$2,000.00 paid to Moulton & Powell and the \$750.00 paid to Moulton and Powell, both of which have been discussed at considerable length in government's brief, were in fact paid, the \$2,000.00 by vouchers drawn June 12, 1943, just two days after that resolution of June 10, and that the \$750.00 expense voucher was drawn in September approximately at the same time as that resolution, and that those are the payments referred to in that first contract.

The Court: They're connected up with this contract which is in evidence?

Mr. Cheadle: They are definitely connected up with that first contract. [83]

The Court: It seems to me they're admissible, unless there's objection.

Mr. Ramsey: Well, I haven't any objection, if they're in issue, for certainly they were issued and they were paid.

(Testimony of Charles L. Powell.)

The Court: It will be admitted.

(Whereupon, petitioner's Exhibit No. 13 for identification was admitted in evidence.)

PETITIONER'S EXHIBIT No. 13

County of Benton

Irrigation District Voucher

Claim No. Warrant No.

Priest Rapids Irrigation District
White Bluffs, Washington

\$1000.00 To Moulton & Powell, Dr.
.....Fund P. O. Address Kennewick, Wash.

Retainer fee for employment in United States of America, Plaintiff vs. Clements Alberts, Defendant to represent District's interests in all matters arising in connection with the acquisition of District's property by the United States in said proceeding, said amount to be in part payment of said retainer fee.....\$1000.00

State of Washington,
County of Benton—ss.

I, M. M. Moulton, having been first duly sworn on oath, do hereby depose and say that I am a member of the claimant named in the attached bill; that no officer or employee of the Priest Rapids Irrigation District is in any manner beneficially inter-

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 13—(Continued)

ested, directly or indirectly, in the claimant or claim hereto attached; that the said claim of \$1000.00 is true and correct; that the services or materials therein mentioned were actually rendered or furnished as therein charged by the person, firm or corporation therein mentioned and not otherwise; that the materials furnished are charged at the lowest price at the time of purchase; that no rebate of any character, kind or description, or any promise of such, has been made to any person or persons whomsoever; and said claim, or any part thereof has not been paid.

/s/ M. M. MOULTON,
Claimant.

Subscribed and sworn to before me this 12th day of June, A.D. 1943.

[Seal] /s/ HAROLD G. FYFE,
Secretary.

The County Auditor is hereby authorized, for and on behalf of the undersigned, to present for payment any warrant issued pursuant to this voucher.

.....,
Claimant.

We hereby approve the above voucher:

/s/ R. S. REIERSON,
/s/ B. SALVINI,
/s/ J. H. EVETT,
Directors.

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 13—(Continued)

/s/ JOS. W. GRELL,
Secretary.

County of Benton
Irrigation District Voucher

Claim No. Warrant No.

Priest Rapids Irrigation District
White Bluffs, Washington

\$750.00 To Moulton & Powell, Dr.

1943 Expense Fund

P. O. Address Kennewick, Wash.

To advance on necessary expenses, legal
preparation and presentation of defense
in U. S. vs. Alberts, as per resolution.....\$750.00

State of Washington,
County of Benton—ss.

I, Charles L. Powell, having been first duly
sworn on oath, do hereby depose and say that I am
partner of the claimant named in the attached bill;
that no officer or employee of the Priest Rapids
Irrigation District is in any manner beneficially
interested, directly or indirectly, in the claimant or
claim hereto attached; that the said claim of
\$750.00 is true and correct; that the services or
materials therein mentioned were actually rendered
or furnished as therein charged by the person, firm
or corporation therein mentioned and not otherwise;

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 13—(Continued)

that the materials furnished are charged at the lowest price at the time of purchase; that no rebate of any character, kind or description, or any promise of such, has been made to any person or persons whomsoever; and said claim, or any part thereof has not been paid.

/s/ CHARLES L. POWELL,
Claimant.

Subscribed and sworn to before me this 29th day of September, A.D. 1943.

/s/ JOS. W. GRELL,
Secretary.

The County Auditor is hereby authorized, for and on behalf of the undersigned, to present for payment any warrant issued pursuant to this voucher.

.....,
Claimant.

We hereby approve the above voucher:

/s/ R. S. REIERSON,

/s/ B. SALVINI,

/s/ J. H. EVETT,
Directors.

/s/ JOS. W. GRELL,
Secretary.

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 13—(Continued)

County of Benton

Irrigation District Voucher

Claim No. Warrant No.

Priest Rapids Irrigation District

White Bluffs, Washington

\$1000.00 To Moulton & Powell, Dr.

.....Fund P. O. Address Kennewick, Wash.

Retainer fee for employment in United States of America, Plaintiff vs. Clements Alberts, Defendant, to represent District's interests in all matters arising in connection with the acquisition of District property by the United States in said proceeding, said amount to be in part payment of such retainer fee.....\$1000.00

State of Washington,
County of Benton—ss.

I, M. M. Moulton, having been first duly sworn on oath, do hereby depose and say that I am a member of the claimant named in the attached bill; that no officer or employee of the Priest Rapids Irrigation District is in any manner beneficially interested, directly or indirectly, in the claimant or claim hereto attached; that the said claim of \$1000.00 is true and correct; that the services or materials therein mentioned were actually rendered or furnished as therein charged by the person, firm or corporation therein mentioned and not otherwise;

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 13—(Continued)
that the materials furnished are charged at the lowest price at the time of purchase; that no rebate of any character, kind or description, or any promise of such, has been made to any person or persons whomsoever; and said claim, or any part thereof has not been paid.

/s/ M. M. MOULTON,
Claimant.

Subscribed and sworn to before me this 12th day of June, A.D. 1943.

[Seal]: /s/ HAROLD G. FYFE,
Notary Public.

The County Auditor is hereby authorized, for and on behalf of the undersigned, to present for payment any warrant issued pursuant to this voucher.

/s/ M. M. MOULTON,
Claimant.

We hereby approve the above voucher:

/s/ R. S. REIERSON,

/s/ B. SALVINI,

/s/ J. H. EVETT,
Directors.

/s/ JOS. W. GRELL,
Secretary.

(Testimony of Charles L. Powell.)

Mr. Cheadle: Mr. Reierson testified yesterday that the vouchers were paid by the county treasurer about the middle of October, 1943, approximately October 19, 1943. These are the dates of issuance to the payees.

(Whereupon, copy of petition in case of Wright vs. Chapman, No. 8035, was marked Petitioner's Exhibit No. 14 for identification.)

Q. I hand to you, Mr. Powell, what's been marked identification number 14, and ask you to identify it.

A. Identification 14 is a certified copy and also, incidentally, an executed duplicate original of the petition for further proceedings in cause number 8035 in Benton County, Washington, in the Superior Court, being the dissolution proceedings there pending brought by the Priest Rapids Irrigation District in 1946.

Mr. Ramsey: Objected to as being incompetent, irrelevant and immaterial. [84]

Mr. Cheadle: Certainly it is not incompetent, your Honor, being a certified copy; as to being irrelevant and immaterial, it, together with the next two documents which we will offer in evidence, have bearing on the position and contention taken by the government in its brief. We are confronted in this hearing on this petition, your Honor, with the peculiar situation of having filed a petition, but not having had any responsive pleading

(Testimony of Charles L. Powell.)

of any character filed by the government. We are advised of the government's position only by what is set forth in the brief which was served just on Tuesday in Kennewick on Moulton & Powell, and we offer these as having bearing on the position of the government as set forth in its brief.

The Court: Which point does it refer to? Which does it have particular bearing on?

Mr. Cheadle: It has bearing on the first point made in the government's brief, namely, that all of this money is the property of the United States, that the United States is the only party having any interest in this condemnation award, and that therefore no payment of any attorneys' fees should be allowed to the District.

The Court: Is it your position that you wish to show that dissolution proceedings have been instituted and are pending in state court, so that it has not yet been determined by the state court who will be the beneficiary? [85]

Mr. Cheadle: That is correct, your Honor, and in the further two exhibits we will offer it will be shown that the government, although in this condemnation proceeding the government has regularly contended that on the government's interpretation of the Horse Heaven case there follows the government's conclusions, as to the situation, yet the government has now in a separate proceeding in Benton County filed a petition, a complaint and a petition for dissolution in which the government

(Testimony of Charles L. Powell.)

now alleges in Benton County that none of the laws of the state of Washington regarding dissolution of irrigation districts has any bearing on the situation of the Priest Rapids Irrigation District, and, of course, the Horse Heaven case, as your Honor knows, was one in which there was interpreted a statute re dissolution of irrigation districts. The government is now in Benton County taking a position contrary to the position being taken by government in its brief here.

The Court: I'll overrule the objection.

Mr. Ramsey: I object to counsel stating what government's position is.

Mr. Cheadle: I have stated what we consider the position of the government will be shown by these documents. We offer these as the best evidence of what the government's position is. [86]

The Court: I don't think we need to get into any argument as to what the government's position is. Mr. Ramsey is the only one who could state that officially in these proceedings, I presume. I think, though, these documents should be admitted in order to show what proceedings are pending in state court.

Mr. Cheadle: I might add they will also have some bearing on the petition of the District for payment of its \$2805 expenses.

The Court: I think you are also contending, do you not, that the District needs the money in addition to that required to pay off the outstanding

(Testimony of Charles L. Powell.)

certificates of indebtedness, to carry on this litigation?

Mr. Cheadle: That is correct, your Honor, so the showing of what is pending there I think does support the petition.

The Court: I'll overrule the objection and admit identification 14. We're only dealing with them one at a time, of course.

(Whereupon, petitioner's Exhibit No. 14 for identification was admitted in evidence.)

PETITIONER'S EXHIBIT No. 14

In the Superior Court of the State of Washington,
in and for the County of Benton

No. 8035

C. I. WRIGHT and MAMIE WRIGHT, Husband and Wife, B. SALVINI, J. H. EVETT and PRIEST RAPIDS IRRIGATION DISTRICT, a Municipal Corporation of the State of Washington,

Plaintiffs,

vs.

HARLEY E. CHAPMAN, County Auditor of Benton County Washington, and C. W. NES-SLY, County Treasurer of Benton County, Washington,

Defendants.

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)

PETITION OF B. SALVINI AND J. H. EVETT,
DE FACTO DIRECTORS OF THE PRIEST
RAPIDS IRRIGATION DISTRICT, A
MUNICIPAL CORPORATION OF THE
STATE OF WASHINGTON

Re

FURTHER PROCEEDINGS

Come now petitioners, B. Salvini and J. H. Evett, pursuant to and in accordance with the decree of this Court, entered in the above-entitled cause on August 1, 1946, and to this Court report, suggest and petition as follows:

I.

In accordance with this Court's decree entered in the above-entitled cause on August 1, 1946, ordering petitioners, the de facto directors of the Priest Rapids Irrigation District, to continue to function as directors of said district and in particular to do any and all things necessary to the defense by said district in the condemnation action of United States of America v. Alberts, et al., Civil No. 128 in the United States District Court for the Eastern District of Washington, and to protect otherwise the interests of said district, the petitioners, B. Salvini and J. H. Evett, have continued to function as directors of the Priest Rapids Irrigation District and have done all things necessary to the defense of said district in said condemnation action.

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)

II.

Said condemnation action came on for trial before said United States District Court on February 10, 1947, and on February 20, 1947, the jury rendered its verdict. The jury found that the just compensation to be paid for the taking of that portion of the properties of the Priest Rapids Irrigation District, not devoted and applied to irrigation purposes, was \$473,356. In answer to a special interrogatory, the jury found that the value of that part and portion of the properties of said district, devoted and applied to irrigation purposes, was \$365,847. The said District Court's judgment on the verdict gave judgment in the sum of \$473,356 against the United States and in favor of the Priest Rapids Irrigation District. Said District Court refused to allow any condemnation award for the so-called irrigation properties which had been valued by the jury in answer to the special interrogatory. Said District Court did order, adjudge and decree, regarding the \$170,500 which had been paid into court by the United States as the estimated just compensation for all of said irrigation district's properties, and which \$170,500 had been used to discharge the bonded indebtedness of said irrigation district, that said bonded indebtedness and said amount of estimated just compensation, \$170,500, were adjudged to be liquidated by the so-called irrigation properties

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued) valued at \$365,845, but for which no compensation was to be paid to the Priest Rapids Irrigation District. From the judgment of said District Court the United States appealed and the Priest Rapids Irrigation District cross-appealed.

III.

The United States Court of Appeals for the Ninth Circuit heard argument of said appeals on July 13, 1948; and on June 21, 1948, said Court of Appeals filed its opinion. Said Court of Appeals held that the lower court was in error in failing to provide in the judgment that \$170,500 paid by the Government should be applied as a credit against the award of \$473,356, and held that judgment against the Government for \$302,856 should be entered. The time allowed by law for the filing of a petition for writ of certiorari, seeking review by the Supreme Court of the United States of said appellate court's decision, expired on or about September 20, 1949, without any such petition for writ of certiorari having been filed and served by either the United States or the Priest Rapids Irrigation District. The decision of said Court of Appeals in said condemnation case has become final, and the Priest Rapids Irrigation District through its attorneys is taking appropriate steps in said District Court for further proceedings in conformance with said appellate court's decision; and in particular, there will soon be presented to said

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)

District Court for entry in said condemnation action a form of judgment against the Government for \$302,856, together with interest, and there will be presented to said District Court applications or petitions for payment to the attorneys of the district of the attorneys' fee in said condemnation action, and for payment of said district's expenses, other than attorneys' fee, incurred in defense of said condemnation action.

IV.

The next to last paragraph of the judgment on verdict, entered by said District Court in said condemnation action on March 7, 1947, as amended by order of said court on March 14, 1947, reads as follows:

“It is Further Ordered, Adjudged, and Decreed that the judgment, and the whole thereof, shall be paid into this Court until such time as this Court shall order the payment of the same to the Superior Court of the State of Washington, in and for Benton County, for the use and benefit of the Priest Rapids Irrigation District in liquidation proceedings to be maintained in said Superior Court, and”

Neither the United States nor the Priest Rapids Irrigation District appealed from said paragraph or the provisions thereof. The petitioners are informed and believe, in view of further, and informal, proceedings had before said District Court,

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued) that said District Court probably will defer payment of the balance of said condemnation judgment to the Superior Court of the State of Washington in and for Benton County until there has been adjudicated by said Superior Court, including disposition of any appeal therefrom, probable questions regarding the parties to whom the assets of the Priest Rapids Irrigation District should be distributed—except that petitioners are informed and believe that said District Court will give consideration to such petitions or applications for payments from said condemnation award as may be deemed proper and be approved by said Superior Court as being necessary to meet expenses attendant to liquidation proceedings or other proceedings in said Superior Court in the above-entitled action.

V.

Petitioners are informed and believe and are advised and therefore allege that the Priest Rapids Irrigation District ceased to function, for the primary purposes for which it was organized and operated, on or about February 23, 1943, due to action by the United States in the exercise of its war powers, more particularly described in the following paragraphs of this petition.

VI.

On February 18, 1943, the Secretary of War pursuant to acts of Congress, and more particularly

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)

the Second War Powers Act, 1942, requested the Attorney General to institute condemnation proceedings to acquire fee simple title to certain described lands, "to be utilized for an establishment of a military reservation, and for other military uses incident thereto," and requested further, because "the utmost haste in expediting this project is vital to the successful prosecution of the war," that the Attorney General "procure an order of the court granting immediate possession of the aforesaid lands."

VII.

In accordance with said request, and pursuant to the authority of acts of Congress, and more particularly the Second War Powers Act, 1942, the United States on February 23, 1943, filed a petition for condemnation and a motion for right of immediate possession. On the same date, February 23, 1943, said District Court granted said motion and signed and entered an order granting right of immediate possession to certain described lands situated in Benton County, Washington, and containing 176,323 acres, more or less.

VIII.

Pursuant to a further letter, dated April 12, 1943, from the Secretary of War to the Attorney General, requesting amendment of said petition and order, to provide for acquisition of additional lands, an amended petition for condemnation was filed on

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)

April 22, 1943. On the same date, April 22, 1943, a motion for right of immediate possession on amended petition was filed in said District Court, and said District Court on the same date, April 22, 1943, signed and entered an order granting right of immediate possession as to additional property.

IX.

The lands described in said petition and amended petition, as to which the United States, by said orders of said District Court, was given the right of immediate possession, included all of the lands belonging to the Priest Rapids Irrigation District, both its so-called power properties and its so-called irrigation properties. The lands covered by said petitions and said orders of said District Court also included all lands owned by parties other than the Priest Rapids Irrigation District and located within the boundaries of said irrigation district.

X.

Pursuant to said orders of said District Court giving the United States the right of immediate possession, the United States on April 1, 1943, took actual, physical possession of the so-called irrigation properties of the Priest Rapids Irrigation District, including the pumping plant and other parts of the irrigation district's distribution system; and took actual, physical possession of the so-called power properties of the Priest Rapids Irrigation

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)

District on October 1, 1943. Said dates of taking actual, physical possession pursuant to said orders granting to the United States the right of immediate possession, were stipulated by the Government during the trial of said condemnation action in said District Court.

XI.

Upon the filing of said petition for condemnation and the granting of said order giving the right of immediate possession, on February 23, 1943, the Priest Rapids Irrigation District was able to function, for the primary purposes for which it had been organized and operated, only at the sufferance of the United States; and upon the United States taking actual, physical possession of said district's irrigation properties on April 1, 1943, the Priest Rapids Irrigation District was rendered utterly unable to function for the primary purposes for which it had been organized and operated, all by sovereign action of the United States of America in the exercise of its war powers.

XII.

After the United States commenced said condemnation proceedings and obtained said right of immediate possession to all of the properties of the Priest Rapids Irrigation District and to all of the lands within the boundaries of said district, and after the United States took actual, physical possession of the irrigation properties of said district

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)
on April 1, 1943, the United States took actual possession of the other properties of said district and of the tracts of lands within the boundaries of said district, from time to time as suited the Government's needs or convenience in its establishment of the military reservation, commonly known as the Hanford Works.

XIII.

The lands within the boundaries of the Priest Rapids Irrigation District, other than the lands owned by the district, were owned variously by individual farmers, the State of Washington, and other landowners, and were subject to assessments by said irrigation district up until that time on February 23, 1943, or not later than April 1, 1943, when the Priest Rapids Irrigation District, by sovereign action of the United States in the exercise of the war powers, was rendered incapable of functioning for the primary purposes for which said district had been organized and operated.

XIV.

The petitioners, de facto directors of the Priest Rapids Irrigation District, are informed and believe, and are advised, and petitioners therefore allege that the statutes of the State of Washington, under which the Priest Rapids Irrigation District was organized and operated as a municipal corporation, do not provide or contemplate any pro-

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)
ceeding for winding up the affairs and distributing the assets of an irrigation district summarily rendered incapable of functioning for the primary purposes for which it was organized, by reason of all of the district's properties and all of the lands located within the boundaries of the district being taken by the United States for military purposes.

In the decree of the above-entitled Court, signed and entered in the above-entitled cause on August 1, 1946, this Court ordered, adjudged and decreed that this Court retain jurisdiction of the above-entitled cause for appropriate supervision of the administration of the Priest Rapids Irrigation District and for further appropriate proceedings directed toward dissolution of said district and distribution of the assets of said district; and said court further ordered, adjudged and decreed:

“It is Further Ordered, Adjudged and Decreed that within a period of sixty days after final decision in said condemnation action, including final disposition of any appeal or review proceedings therein, said *de facto* directors shall report to this Court the final decision in said condemnation action and shall suggest, by petition to this Court, such proceedings directed toward dissolution of the Priest Rapids Irrigation District, appointment of trustees and distribution of the assets of said district as shall be deemed by them to be appropriate.”

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)

XV.

In accordance with said order of August 1, 1946, petitioners suggest that this Court, having obtained jurisdiction of the trust estate made up of the properties of the Priest Rapids Irrigation District, including the right of the district to the condemnation award which stands in the place of the properties of said district which were taken in condemnation by the United States, this Court as a court of equity, in the absence of prescribed statutory procedure, has inherent power to administer the trust estate and see that it is distributed to the persons who are entitled to share in it; and that this Court may proceed either upon its own motion or upon the application of the trustees or beneficiaries.

XVI.

Petitioners further suggest that in equity the Priest Rapids Irrigation District, for purposes of determining the persons who are entitled to share in distribution of said trust estate, should be deemed to have been dissolved, in effect or *de facto*, on or about February 23, 1943, and in no event later than April 1, 1943, and that in equity the trust estate should be distributed equitably among the persons who, by reason of their interest in lands located within the boundaries of said irrigation district, were members of the group really interested in the success of said district and had to meet the burdens

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)
of said district prior to the disruptive action taken
by the United States in February, 1943, in the
exercise of war powers.

XVII.

Petitioners further suggest that, and petitioners
are informed and believe and therefore allege that,
the United States probably will assert, in further
proceedings in the above-entitled cause directed
toward winding up the affairs of said district and
distributing the trust estate, that the United States
is entitled to the trust estate to the exclusion of
any right, title or interest asserted by any persons
who, by reason of their interest in lands located
within the boundaries of the irrigation district,
were members of the group really interested in the
success of said district and had to meet the burdens
of said district prior to the disruptive action taken
by the United States in February, 1943, in the
exercise of war powers.

XVIII.

Petitioners further suggest that as two of the
last elected directors of said district and as the
de facto directors of said district they are qualified
to represent, and appropriately can represent said
district, and at least as against the adverse claim
which probably will be made by the United States,
all of the persons who, by reason of their interest
in lands located within the boundaries of the irriga-

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)
tion district, were members of the group really interested in the success of said district and had to meet the burdens of said district prior to the disruptive action taken by the United States in February, 1943, in the exercise of war powers. Petitioners further suggest that Richard S. Reierson, the other of the last elected members of the board of directors of said district, but who resigned from said office and served as secretary of said district from 1943 to date, is likewise qualified to represent and appropriately can represent said district, and at least against said adverse claim which probably will be asserted by the United States, all of said persons. And petitioners suggest that B. Salvini, J. H. Evett and R. S. Reierson should be appointed as liquidating trustees of the Priest Rapids Irrigation District to serve until further order of the above-entitled court.

XIX.

Petitioners further suggest that due notice and opportunity to be heard should be given to the United States, through the Attorney General of the United States, in connection with consideration and action by this Court on paragraph 4 of the prayer of this petition. Petitioners further suggest that the State of Washington, through its Attorney General, likewise should be given such notice and opportunity to be heard, in view of the fact that the Priest Rapids Irrigation District is a municipal corporation created by the State of Washington

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)
and in view of the fact that the State of Washington, prior to the action of the United States in February, 1943, owned lands within the boundaries of the Priest Rapids Irrigation District and regularly, as such owner, bore its proportionate share of the burdens of said district.

XX.

Petitioners further suggest that the liquidating trustees of the Priest Rapids Irrigation District appointed by this Court should be authorized to employ attorneys to render legal services necessary in further proceedings in the above-entitled cause, upon terms subject to the approval of this Court; and that said liquidating trustees should be authorized to incur other expenditures necessary in said further proceedings, and that said liquidating trustees should receive compensation for their services, all subject to the approval of this Court.

Wherefore, petitioners pray that this Court in the exercise of its equity jurisdiction in the above-entitled cause:

(1) Appoint B. Salvini, J. H. Evett and R. S. Reierson liquidating trustees of the Priest Rapids Irrigation District, to serve until further order of this Court;

(2) Authorize the liquidating trustees of the Priest Rapids Irrigation District to employ attorneys for legal services in further proceedings in

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)
the above-entitled cause, upon terms subject to the
approval of this Court;

(3) Issue an order setting a date for a hearing
on this petition and on paragraph 4 of this prayer,
and requiring that notice of said hearing and
opportunity to file an answer, cross-petition or
other pleading responsive to this petition be given
to the United States of America, through its
Attorney General, and to the State of Washington,
through its Attorney General; and requiring that
said notice be published at least once in a news-
paper of general circulation in Benton County;

Petitioners further pray that, upon said notice
and hearing, this Court order, adjudge and decree
that:

(4)(a) The Priest Rapids Irrigation District
was, in effect and *de facto*, dissolved on or about
February 23, 1943, and in any event no later than
April 1, 1943;

(b) There is no prescribed statutory procedure
or provision for winding up the affairs of the
Priest Rapids Irrigation District and distributing
the trust estate to the persons who are entitled to
share in it, and this Court, as a court of equity, has
inherent power to administer the trust estate of
the Priest Rapids Irrigation District and see that
it is distributed to the persons who are equitably
entitled to share in it;

(c) The persons entitled to share in the trust

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)

estate of the Priest Rapids Irrigation District are those persons who, by reason of their interest in lands located within the boundaries of the irrigation district, were members of the group which was really interested in the success of the Priest Rapids Irrigation District and had to meet the burdens of said district prior to the disruptive action taken by the United States in February, 1943, in the exercise of war powers;

(d) The liquidating trustees proceed to investigate records and report to this Court the names of said persons and their respective holdings of lands within the boundaries of said irrigation district on or about February 23, 1943, and in no event later than April 1, 1943, and proceed also to suggest to this Court such further proceedings and forms of notice thereof as shall be deemed by said liquidating trustees to be appropriate.

/s/ B. SALVINI,

/s/ J. H. EVETT.

State of Washington,
County of Yakima—ss.

We, B. Salvini and J. H. Evett, being first duly sworn on oath, depose and say: That we have read the within and foregoing Petition, know the contents thereof and believe the same to be true.

/s/ B. SALVINI,

/s/ J. H. EVETT.

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)

Subscribed and sworn to before me this 19th day of November, 1949.

[Seal] /s/ CHARLES L. POWELL,
Notary Public in and for the State of Washington,
Residing at Kennewick.

Filed Nov. 25, 1949.

In the Superior Court of the State of Washington
for Benton County

No. 8035

C. I. WRIGHT, et ux, B. SALVINI, J. H. EVETT and PRIEST RAPIDS IRRIGATION DISTRICT, a Municipal Corporation of the State of Washington,

Plaintiff,

vs.

HARLEY E. CHAPMAN, County Auditor of Benton County, Washington, and C. W. NESSLY, County Treasurer of Benton County, Washington,

Defendant.

CERTIFICATE

I, Fred D. Kemp, County Clerk, and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 14—(Continued)
of the Petition of B. Salvini and J. H. Evett, De
Facto Directors of the Priest Rapids Irrigation
District, a Municipal Corporation of the State of
Washington, Re Further Proceedings, Filed No-
vember 25, 1949, in the above-entitled action, as
the same now appears on file and of record in my
office.

In Testimony Whereof, I have hereunto set my
hand and affixed the seal of said Court this 4th day
of January, 1950.

FRED D. KEMP,
Clerk.

[Seal] By /s/ BESS ROYER,
Deputy.

(Whereupon, copy of summons and com-
plaint in case No. 9913 was marked petitioner's
Exhibit No. 15 for identification.)

(Whereupon, copy of answer and counter
petition in case No. 9913 was marked peti-
tioner's [87] Exhibit No. 16 for identification.)

Q. (By Mr. Cheadle): I hand you, Mr. Powell,
what has been marked identification number 15, and
ask you to identify it.

A. Identification number 15 is a certified copy
of the summons and complaint filed in Benton
County, Washington, in the Superior Court, in

(Testimony of Charles L. Powell.)

cause Number 9913, an action brought by the United States of America as plaintiff against the Priest Rapids Irrigation District and its directors and secretary.

Q. I'll have you identify next, Mr. Powell, what's been marked identification number 16.

A. Identification number 16 is the answer and counter-petition, a certified copy of the answer and counter-petition of the defendants in cause number 9913 in the Superior Court of the State of Washington for Benton County.

Mr. Cheadle: I'll offer in evidence as petitioner's Exhibit No. 15 what has been marked identification 15.

Mr. Ramsey: The same objection as was interposed to the preceding.

The Court: Overruled; 15 and 16 will be admitted.

Mr. Cheadle: And 16 will have the same objection, your Honor, and it is offered likewise.

(Whereupon, petitioner's Exhibits Nos. 15 and 16 for identification were admitted in evidence.) [88]

(Testimony of Charles L. Powell.)

PETITIONER'S EXHIBIT No. 15

In the Superior Court of the State of Washington
in and for Benton County

No. 9913

In the Matter of the Dissolution of
PRIEST RAPIDS IRRIGATION DISTRICT, a
Corporation.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT, a
Corporation, and B. SALVINI, J. H. EVETT
and R. S. REIERSON,

Defendants.

SUMMONS

The State of Washington to the above-named defendants: Priest Rapids Irrigation District, a Corporation, and B. Salvini, J. H. Evett and R. S. Reierson:

Your are hereby summoned to appear within 20 days after the service of this summons, exclusive of the day of service, if served within the State of Washington, or 60 days if served out of the State of Washington, and defend the above-entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the Complaint and Peti-

(Testimony of Charles L. Powell.)

Petitioner's Exhibit 15—(Continued)
tion for Dissolution which will be filed with the clerk
of said court, a copy of which is herewith served
upon you; and you are required to answer the Com-
plaint and Petition for Dissolution and serve a copy
of your answer upon the undersigned, at the address
below stated, within said time.

HARVEY ERICKSON,
United States Attorney.

HART SNYDER,
Special Attorney for the
Department of Justice.

Office and Post Office Address:

506 Empire State Building,
Spokane 8, Washington.

Filed Nov. 15, 1949.

(Testimony of Charles L. Powell.)

Petitioner's Exhibit 15—(Continued)

In the Superior Court of the State of Washington
in and for Benton County

No. 9913

In the Matter of the Dissolution of
PRIEST RAPIDS IRRIGATION DISTRICT, a
Corporation.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT, a
Corporation, and B. SALVINI, J. H. EVETT
and R. S. REIERSON,

Defendants.

COMPLAINT AND PETITION
FOR DISSOLUTION

Comes now the plaintiff by the undersigned Harvey Erickson, United States Attorney for the Eastern District of Washington, and Hart Snyder, Special Attorney for the Department of Justice, acting under and by direction of the Attorney General of the United States, and for a cause of action against the above-named defendants, alleges:

1.

That defendant Priest Rapids Irrigation District is a corporation, organized and existing under the

(Testimony of Charles L. Powell.)

Petitioner's Exhibit 15—(Continued)

laws of the State of Washington relative to the formation of irrigation districts; that the defendants B. Salvini, J. H. Evett and R. S. Reierson are the last elected directors of said corporation, but that the term of office of which the said B. Salvini, J. H. Evett and R. S. Reierson were elected as directors of the Priest Rapids Irrigation District, has long since expired, and that neither the said B. Salvini, J. H. Evett nor R. S. Reierson own any land or evidence of title to land within the Priest Rapids Irrigation District, nor have they, nor any of them, owned any land or evidence of title to land within the boundaries of the Priest Rapids Irrigation District for more than five years past, and that the said B. Salvini, J. H. Evett and R. S. Reierson have continued to conduct the affairs of the Priest Rapids Irrigation District for more than five years past solely as statutory trustees and not as duly elected and qualified directors of said district.

2.

That between February 23, 1943, and May 12, 1944, the plaintiff United States of America acquired the fee title to all lands within the boundaries of said district, and ever since has been and now is the owner in fee of all of said lands; that between February 23, 1943, and May 12, 1944, the plaintiff, United States of America, acquired in fee all lands owned by the said Priest Rapids Irrigation District, and all irrigation facilities owned by said dis-

(Testimony of Charles L. Powell.)

Petitioner's Exhibit 15—(Continued)

trict, including all hydro-electric generating and distribution facilities, all pumping plants, pipe lines, canals and laterals, and ever since has been and now is the sole owner of said facilities and properties; that said lands and said facilities were acquired by the United States of America for use in connection with the Hanford Atomic Energy Project, and have been and will continue to be used exclusively for said purposes; that the description of all land within the boundaries of the Priest Rapids Irrigation District is set forth in Exhibit A attached hereto and made a part hereof.

3.

That said Priest Rapids Irrigation District has no outstanding bonds, all of said bonds having heretofore been paid in full by plaintiff; that there are no freeholders nor holders of title or evidence of title to lands within said district who are qualified electors thereof; that said district has from time to time in the past secured the irrigation of portions of its lands and is not insolvent.

4.

That the lands within said district are no longer being irrigated, and said district has no further functions to perform, and no reason or purpose can be served by its continued existence.

5.

That the statutes of the States of Washington

(Testimony of Charles L. Powell.)

Petitioner's Exhibit 15—(Continued)

make no provision for the dissolution of an irrigation district under the circumstances existing in this case; nevertheless, if not dissolved the said district will continue in existence, incurring further obligations and dissipating its assets in the unnecessary maintenance and continuation of its corporate existence.

6.

That the United States of America is the sole party interested in the lands and assets of said district and must necessarily suffer a substantial pecuniary loss and irreparable damage if said district is permitted to continue as an existing corporation, and plaintiff has no adequate or speedy remedy at law.

7.

That the appointment of a receiver is necessary for the purpose of liquidating the assets of said corporation, accepting and paying lawful claims against said corporation, and distributing the proceeds of such receivership to the person or persons entitled thereto, such receiver to act without compensation either for himself or for such attorneys as may represent him in these proceedings.

8.

That Bernard H. Ramsey is a citizen of the United States, and a resident and freeholder of the State of Washington, qualified and competent to serve

(Testimony of Charles L. Powell.)

Petitioner's Exhibit 15—(Continued)

as such receiver, and if appointed will serve without compensation.

Wherefore plaintiff prays for relief as follows:

1. That the defendant Priest Rapids Irrigation District be dissolved and its corporate existence terminated;
2. That a receiver be appointed to accept and liquidate the assets thereof; to receive claims of creditors against such assets and to pay all lawful claims; and to distribute the remaining assets to the plaintiff herein, such receiver to act without compensation for himself or for such attorneys as may represent him.

HARVEY ERICKSON,

United States Attorney,

HART SNYDER,

Special Attorney for the Department of Justice,
Attorneys for Plaintiff.

State of Washington,

County of Yakima—ss.

Hart Snyder, being first duly sworn, on oath says: That he is one of the attorneys for plaintiff above named, and makes this verification on its behalf;

That affiant has read the foregoing Complaint and Petition for Dissolution, knows the contents thereof, and believes the same to be true.

HART SNYDER.

(Testimony of Charles L. Powell.)

Petitioner's Exhibit 15—(Continued)

make no provision for the dissolution of an irrigation district under the circumstances existing in this case; nevertheless, if not dissolved the said district will continue in existence, incurring further obligations and dissipating its assets in the unnecessary maintenance and continuation of its corporate existence.

6.

That the United States of America is the sole party interested in the lands and assets of said district and must necessarily suffer a substantial pecuniary loss and irreparable damage if said district is permitted to continue as an existing corporation, and plaintiff has no adequate or speedy remedy at law.

7.

That the appointment of a receiver is necessary for the purpose of liquidating the assets of said corporation, accepting and paying lawful claims against said corporation, and distributing the proceeds of such receivership to the person or persons entitled thereto, such receiver to act without compensation either for himself or for such attorneys as may represent him in these proceedings.

8.

That Bernard H. Ramsey is a citizen of the United States, and a resident and freeholder of the State of Washington, qualified and competent to serve

(Testimony of Charles L. Powell.)

Petitioner's Exhibit 15—(Continued)

as such receiver, and if appointed will serve without compensation.

Wherefore plaintiff prays for relief as follows:

1. That the defendant Priest Rapids Irrigation District be dissolved and its corporate existence terminated;
2. That a receiver be appointed to accept and liquidate the assets thereof; to receive claims of creditors against such assets and to pay all lawful claims; and to distribute the remaining assets to the plaintiff herein, such receiver to act without compensation for himself or for such attorneys as may represent him.

HARVEY ERICKSON,
United States Attorney,

HART SNYDER,

Special Attorney for the Department of Justice,
Attorneys for Plaintiff.

State of Washington,
County of Yakima—ss.

Hart Snyder, being first duly sworn, on oath says: That he is one of the attorneys for plaintiff above named, and makes this verification on its behalf;

That affiant has read the foregoing Complaint and Petition for Dissolution, knows the contents thereof, and believes the same to be true.

HART SNYDER.

(Testimony of Charles L. Powell.)

Petitioner's Exhibit 15—(Continued)

Subscribed and sworn to before me this 8th day of November, 1949.

LIONEL PUGMIRE,

Notary Public Within and for the State of Washington, Residing at Yakima.

Filed Nov. 8, 1949.

Exhibit "A"

Beginning at the intersection of the south line of the right-of-way of the irrigation canal of the Consumers Ditch Company with the westerly bank of the Columbia River in Section 5 in Township 12 No., Range 28 E.W.M., thence westerly, northerly and southerly along the course of the southerly and westerly right-of-way line of said canal as the same is laid out and extends across, over and through Sections 5 and 6, in Township 12 North, Range 28 E.W.M., and across, over and through Section 31, in Township 13 North, Range 28 E.W.M., and across, over and through Sections 36, 35, 26, 27, 28, 21, 16, 17, 8, 7 and 6 in Township 13 North, Range 27 E.W.M., and across, over and through Section 1, in Township 13 North, Range 26 E.W.M., and across, over and through Sections 36, 25, 26, 27, 34, 33, 32 and 31 in Township 14 North, Range 26 E.W.M., and across, over and through Section 6, Township 13 North, Range 26 E.W.M., to the north and south center line of said Section 6; thence south along said center line to the north line of the right-of-way

(Testimony of Charles L. Powell.)

Petitioner's Exhibit 15—(Continued)

of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, a corporation; thence southwesterly along the north line of said right-of-way to the west line of said section; thence north along the west line of said section to the southerly bank of the Columbia River; thence down the Columbia River along the southerly and easterly bank thereof and around the bend of said river along the southerly and westerly bank thereof to the place of beginning, in said Section 5, Township 12 North, Range 28 E.W.M.

Excluding Therefrom the Following Described Lands, to wit:

Lots 225, 226, 227 Klondyke Terrace Point Orchards, and also shorelands in front of said property described as follows: Shorelands in front of Lot 7, Sec. 18, Tp. 14 N. Rg. 27, E.W.M., lying So. of E. & W. center line running across Lots 8 and 7 to the Columbia River;

Tracts 14, 15 and 16 in Sec. 31, Tp. 13 N., Rg. 28 E.W.M.

Tracts 9, 10, and 11 of Hanford Irrigation and Power Company's subdivision of Sec. 31, Tp. 13 N., Rg. 28 E.W.M., containing 15.98 acres, more or less.

Tracts 212, 213 and 214 Klondyke Terrace Point Orchard Tracts.

Tract 4 of Hanford Plat in Sec. 3, Tp. 13 N., Rg. 27 E.W.M.

Lot 6 in Sec. 3, Tp. 13 N., Rg. 27 E.W.M.

(Testimony of Charles L. Powell.)

Petitioner's Exhibit 15—(Continued)

all of the foregoing lands being located in Benton County, Washington.

In the Superior Court of the State of Washington
For Benton County

No. 9913

In the Matter of the Dissolution of
PRIEST RAPIDS IRRIGATION DISTRICT,
et al,

Plaintiff,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,
et al.,

Defendant.

CERTIFICATE

I, Fred D. Kemp, County Clerk, and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Summons, filed Nov. 15, 1949, and Complaint and Petition for Dissolution, filed Nov. 8, 1949, in the above-entitled action, as the same now appears on file and of record in my office.

In Testimony Whereof, I have hereunto set my

(Testimony of Charles L. Powell.)

Petitioner's Exhibit 15—(Continued)
hand and affixed the seal of said Court this 4th day
of January, 1950.

FRED D. KEMP,
Clerk.

[Seal] By /s/ BESS ROYER,
Deputy.

PETITIONER'S EXHIBIT No. 16

In the Superior Court of the State of Washington
in and for Benton County

No. 9913

In the Matter of the Dissolution of
PRIEST RAPIDS IRRIGATION DISTRICT, a
Corporation,

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT, a
Corporation, and B. SALVINI, J. H. EVETT
and R. S REIERSON,

Defendants.

ANSWER AND COUNTER PETITION

Come now the defendants, Priest Rapids Irrigation District, a municipal corporation of the State of Washington, and B. Salvini, J. H. Evett and

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

R. S. Reierson, and in answer to the complaint and petition for dissolution in the above-entitled cause state and allege that:

1.

Defendants admit that the Priest Rapids Irrigation District is a corporation organized under the laws of the State of Washington relative to the formation of irrigation districts; but deny that said district is an existing corporation in all of the respects contemplated by said laws. Defendants admit that B. Salvini, J. H. Evett and R. S. Reierson are the last elected directors of said district; that the terms of office for which they were elected as directors of the Priest Rapids Irrigation District have expired; that none of them now owns any land or evidence of title to land within the Priest Rapids Irrigation District; and that none of them has owned any land or evidence of title to land within the boundaries of said district for more than five years past; but defendants deny plaintiff's allegation that said B. Salvini, J. H. Evett and R. S. Reierson have continued to conduct the affairs of the Priest Rapids Irrigation District for more than five years past solely as statutory trustees and not as duly elected and qualified directors of said district.

In further answer to paragraph 1 of said complaint and petition for dissolution defendants allege as follows: Said B. Salvini and J. H. Evett are *de facto* directors of the Priest Rapids Irrigation

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

District, as determined and adjudicated by the decree of the above-entitled Court on August 1, 1946, in the cause entitled Wright, et al. v. Chapman, et al., No. 8035 in the Superior Court of the State of Washington in and for Benton County. In said decree it was ordered, adjudged and decreed that "plaintiffs B. Salvini and J. H. Evett are de facto directors of the Priest Rapids Irrigation District and that, until further order of this Court as hereinafter provided for, said plaintiffs shall continue to function as directors of said district and in particular shall do any and all things necessary to the defense by said district against the petitioner in the condemnation action of United States of America v. Alberts, et al., Civil No. 128 in the United States District Court for the Eastern District of Washington, and necessary to protect otherwise the interests of said district;". The United States of America, plaintiff in the above-entitled cause, No. 9913, now has, and at all times material has had, knowledge and information of the provisions of said decree of August 1, 1946, in said cause No. 8035 in the above-entitled Court—the United States of America through Bernard H. Ramsey, Special Assistant to the Attorney General, having filed on or about May 1, 1946, in said cause No. 8035 a Suggestion of Interest in which the jurisdiction of the above-entitled Court in said cause No. 8035 was questioned; and the United States of America through said Bernard H. Ramsey, by motion for appointment of trustee

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

or receiver and for restraining order filed on May 6, 1946, in the United States District Court for the Eastern District of Washington in United States v. Alberts, et al., Civil No. 128, having sought to restrain further proceedings in said cause No. 8035 and to obtain by Federal court action the appointment of a trustee or receiver of said district, said motion for appointment of trustee or receiver and for a restraining order having been denied by the order of said Federal District Court entered on June 26, 1946; and said Bernard H. Ramsey having been furnished, informally as he requested, with a copy of said decree of August 1, 1946, entered by the above-entitled Court in said cause No. 8035, and having been furnished with copies of further proceedings had in said cause No. 8035 late in the year of 1946 and early in the year of 1947.

2.

Defendants admit the allegations of paragraph 2 of the complaint and petition for dissolution in the above-entitled cause.

In further answer to said paragraph 2 defendants allege as follows: The United States in the exercise of its war powers, by orders granting the right of immediate possession obtained by the United States pursuant to the provisions of the Second War Powers Act., 1942, in said action of United States v. Alberts, et al., Civil No. 128 in said Federal District Court, on February 23, 1943, and on April 12, 1943,

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

obtained the right of immediate possession to all lands within the boundaries of the Priest Rapids Irrigation District. Pursuant to said orders, the United States on April 1, 1943, took actual, physical possession of the so-called irrigation properties of said district, and on October 1, 1943, took actual, physical possession of the so-called power properties of said district; and from time to time, following entry of said orders granting right of immediate possession, the United States took actual possession of the tracts of lands within the boundaries of said district, as suited the Government's needs or convenience in its establishment of the military reservation now known as the Hanford Atomic Energy Project. By reason of the action of the United States on February 23, 1943, in obtaining one of said orders giving the right of immediate possession, the Priest Rapids Irrigation District was able to function for the primary purposes for which it had been organized and operated, only at the sufferance of the United States; and upon the United States taking actual, physical possession of said district's irrigation properties on April 1, 1943, the Priest Rapids Irrigation District was rendered utterly unable to function for the primary purposes for which it had been organized and operated, due to the sovereign action of the United States of America in the exercise of its war powers.

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

3.

Defendants admit that the Priest Rapids Irrigation District has no outstanding bonds; but defendants deny that said bonds have heretofore been paid in full or in part by plaintiff, the files and records in *United States vs. Alberts, et al.*, Civil No. 128 in said Federal District Court showing that said bonds were paid pursuant to order of said District Court from the monies deposited in Court in 1944 by the United States as the estimated just compensation for all of the properties of the Priest Rapids Irrigation District which had been taken by the United States in 1943 pursuant to said orders of February 23, 1943, and April 12, 1943, giving the United States the right of immediate possession. Defendants admit that there are no freeholders or holders of title or evidence of title to lands within the Priest Rapids Irrigation District who are qualified electors thereof. Defendants admit that the Priest Rapids Irrigation District from time to time in the past, to wit: prior to the disruptive action of the United States of America on February 23, 1943, and April 1, 1943, secured the irrigation of portions of its lands and of lands within the boundaries of said district; and defendants admit that the Priest Rapids Irrigation District is not insolvent.

4.

Defendants admit that the lands within said dis-

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

trict are no longer being irrigated, said lands and the properties of the district having been taken by the United States in the exercise of its war powers for the purpose of establishing and operating the military reservation now known as the Hanford Atomic Energy Project.

Defendants deny plaintiff's allegation that said district has no further functions to perform. In further answer to said allegation, defendants allege as follows: Pursuant to the August 1, 1946, decree of the above-entitled Court in said cause No. 8035 said district, and B. Salvini and J. H. Evett, de facto directors of said district, have the function of doing any and all things necessary to the defense by said district against the United States of America in the condemnation action of United States of America vs. Alberts, et al., Civil No. 128 in said Federal District Court, and have the function of doing all things necessary to protect otherwise the interests of said district. Said de facto directors, B. Salvini and J. H. Evett have filed a petition re further proceedings in said cause No. 8035, pursuant to and in accordance with the decree of the above-entitled Court, dated August 1, 1946, which reads in part as follows:

"It Is Further Ordered, Adjudged and Decreed that within a period of sixty days after final decision in said condemnation action, including final disposition of any appeal or review

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

proceedings therein, said de facto directors shall report to this Court the final decision in said condemnation action and shall suggest, by petition to this Court, such proceedings directed toward dissolution of the Priest Rapids Irrigation District, appointment of trustees and distribution of the assets of said district as shall be deemed by them to be appropriate."

Defendants deny plaintiff's unqualified allegation that no reason or purpose can be served by the continued existence of the Priest Rapids Irrigation District; but defendants admit that no reason or purpose can be served by the continued existence of said district excepting the function, reason or purpose of continuing to do any and all things necessary to the defense by said district against the United States of America in said condemnation action, Civil No. 128 in said District Court, and to do all things necessary to protect otherwise the interests of said district, and to proceed further in the above-entitled Court in said cause No. 8035, through petition of the de facto directors, B. Salvini and J. H. Evett, in accordance with the above-entitled Court's decree of August 1, 1946, in said cause No. 8035.

5.

Defendants admit plaintiff's allegation that the statutes of the State of Washington make no provision for the dissolution of an irrigation district

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

under the circumstances existing in this case. In further answer to said allegation, defendants allege as follows: The above-entitled Court, in said cause No. 8035, having obtained jurisdiction of the trust estate made up of the properties of the Priest Rapids Irrigation District, including the right of the district to the condemnation award which stands in the place of the properties of said district which were taken in condemnation by the United States, this Court as a court of equity in said cause No. 8035, in the absence of prescribed statutory procedure, has inherent power to administer the trust estate and see that it is distributed to the persons who are entitled to share in it.

Defendants deny plaintiff's allegation that if not dissolved the said district will continue in existence, incurring further obligations and dissipating its assets in the unnecessary maintenance and continuation of its corporate existence. Defendants admit that if not dissolved said district would continue its formal corporate existence, incurring such expenses as necessary to said continuation; but defendants deny any direct or inferential allegation in paragraph 5 of plaintiff's complaint and petition for dissolution that there has been in the past, or that there is now, or that there is threatened, any incurring of unnecessary obligations or any dissipating of said district's assets. In further answer defendants allege as follows: Obligations incurred and expenditures of said district's funds in the past have been

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

only such as were necessary in the functioning of the district for the purposes for which it was organized and operated; and after the disruptive action of the United States taken in February and April, 1943, in the exercise of the Federal Government's war powers, said district has incurred only such obligations and has made only such expenditures of its funds as were necessary in defense against the United States of America in the aforesaid condemnation action; and subsequent to August 1, 1946, said district through its said de facto directors has incurred only such obligations and made only such expenditures as were necessary in carrying out the provisions of the decree entered on August 1, 1946, by the above-entitled Court in said cause No. 8035. Said de facto directors have acted and now are continuing to act in strict accordance with said decree of August 1, 1946. There is no threatened dissipation of the assets of the Priest Rapids Irrigation District other than the threat involved in the continued actions of the United States of America, as exemplified by plaintiff's complaint and petition for dissolution in the above-entitled cause No. 9913, which was filed by the plaintiff notwithstanding plaintiff's full knowledge and information regarding the pending cause No. 8035 in the above-entitled Court, and in particular the decree of August 1, 1946, therein, and notwithstanding the general knowledge and information had in October, 1949, by the United States through its officer Ber-

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

nard H. Ramsey, Special Assistant to the Attorney General, of the activities of said de facto directors and said district's attorneys directed toward the filing of a petition re further proceedings in said cause No. 8035, which petition was signed by said de facto directors on November 19, 1949, and was filed in said cause No. 8035 on November 23, 1949.

6.

Defendants deny the allegations of paragraph 6 of said complaint and petition for dissolution.

In particular, defendants deny that plaintiff is the sole party interested in the assets of said district; and defendants deny that plaintiff has any interest whatever in any of the assets of said district.

Defendants admit that the United States owns and holds the fee title interest in and to the lands which were the lands of said district before the United States took said lands in the exercise of the Federal Government's war powers in 1943, which taking rendered said district utterly unable to function for the primary purposes for which it had been organized and operated. But defendants deny that the United States of America has any interests whatsoever in the present assets of said district, and in particular deny that the United States has any interest whatsoever in the condemnation award in said Civil action No. 128 in said Federal District Court, which award stands in the place of the lands and properties of said district

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)
which were taken by the United States in the exercise of its war powers.

Defendants deny that the United States would necessarily, or otherwise, suffer a substantial pecuniary loss or any loss whatsoever, or irreparable damage or any damage whatsoever, if said district were permitted to continue as an existing corporation; and defendants deny any allegation by plaintiff, inferential or otherwise, in paragraph 6 of plaintiff's complaint and petition for dissolution that the Priest Rapids Irrigation District or all of the defendants or any of them is threatening to continue or threatening to attempt to continue the formal corporate existence of said district.

Defendants deny plaintiff's allegation that plaintiff has no adequate or speedy remedy at law; and more specifically defendants deny that plaintiff has any cause of action which would entitle plaintiff to any remedy at law or in equity with regard to the matters set forth in the complaint and petition for dissolution in the above-entitled cause No. 9913.

In further answer to paragraph 6 of said complaint and petition for dissolution defendants allege as follows: In said cause No. 8035 in the above-entitled Court—in which pending cause No. 8035 the above-entitled Court in 1946 did take and did retain jurisdiction of said cause for appropriate supervision of the administration of the Priest Rapids Irrigation District and for further appropriate proceedings directed toward dissolution of said district

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)
and distribution of the assets of said district—the United States of America has had and does have now full opportunity to present and have adjudicated any contention of the United States that the United States is entitled, in proceedings for the winding up of the affairs of said district, to recoup for the United States the condemnation award which the United States, in said condemnation action Civil No. 128 in said Federal District Court, was required to pay for the properties of said irrigation district which the United States took in the exercise of the Federal Government's war powers.

7.

Defendants deny the allegations in paragraph 7 of the complaint and petition for dissolution in the above-entitled cause No. 9913. In further answer to said paragraph 7, defendants allege as follows: The United States of America through Bernard H. Ramsey, Special Assistant to the Attorney General of the United States, has had at all material times and does have now knowledge that in the pending cause in the above-entitled Court, said No. 8035, this Court has taken and does retain jurisdiction of said cause No. 8035 for the purpose of winding up the affairs of the Priest Rapids Irrigation District.

8.

Defendants deny the allegations of paragraph 8 of said complaint and petition for dissolution, ex-

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)
cept that defendants admit that Bernard H. Ramsey
is a citizen of the United States.

In objection to plaintiff's complaint and petition
for dissolution in the above-entitled cause No. 9913
for the reason that there is another action pending
in the above-entitled Court involving the same sub-
ject matter, in which the plaintiff has appeared for
the purpose of filing a Suggestion of Interest and
in which plaintiff has had and does now have oppor-
tunity to seek such relief, if any, to which the
plaintiff may be entitled; and in further and affirma-
tive answer to said complaint and petition for disso-
lution, by affirmative statement of matters constitut-
ing a defense and, in the alternative, constituting a
counter claim, the defendants allege that:

I.

Defendants B. Salvini and J. H. Evett are two
of the plaintiffs in the pending cause entitled C. I.
Wright and Mamie Wright, husband and wife, B.
Salvini, J. H. Evett and Priest Rapids Irrigation
District, a municipal corporation of the State of
Washington, plaintiffs, vs. Harley E. Chapman,
County Auditor of Benton County, Washington,
and C. W. Nessly, County Treasurer of Benton
County, Washington, defendants, being cause No.
8035 in the above-entitled court.

II.

Said cause No. 8035 was heard by this Court on
the merits on July 12, 1946; and earlier proceedings
which involved said cause are recited in the decree

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

of August 1, 1946, which this Court entered after said hearing on the merits. Said decree of this Court, dated August 1, 1946, and entered in said pending cause No. 8035, reads as follows:

The above-entitled cause having come on for trial on the 12th day of July, 1946, the plaintiffs being represented by their attorney, J. K. Cheadle, and the defendants by their attorney, Andrew Brown; said cause, pursuant to stipulation of counsel, having been consolidated for purposes of trial with the action of Dietrich, et al. vs. Chapman, et al., No. 7987; and A. E. Taylor, successor of Harley E. Chapman as County Auditor of Benton County, on motion made in open court and pursuant to consent of his attorney, appearing for him, having been substituted for said Harley E. Chapman as a party defendant; and a suggestion of want of jurisdiction of this Court having been presented by the Suggestion of Interest filed herein by the United States of America on May 1, 1946, and an analogous question of jurisdiction having been decided previously in favor of the jurisdiction of this Court by this Court's denial on April 11, 1946, of the motion to quash and dismiss filed in said action No. 7987 by the United States of America under special appearance for that purpose, and the jurisdiction of this Court in the above-entitled cause having been upheld by the denial of the motion for appointment of trustee or receiver and for restraining order filed by the United States of America on May 6, 1946, in

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)
the United States District Court for the Eastern District of Washington in United States vs. Alberts, et al., Civil No. 128, and denied by the order of said Court entered on June 26, 1946, and this Court having decided on July 12, 1946, in conformance with said prior decisions and contrary to said suggestion, that this Court has jurisdiction, and accordingly having proceeded to trial on the merits; and upon said trial it appearing to the Court, and being so found by the Court, that the facts are as alleged in the complaint and in particular that the defendants, although acting in good faith, have threatened to refuse to issue and pay warrants on the funds of the Priest Rapids Irrigation District on the basis of vouchers approved by the plaintiffs B. Salvini and J. H. Evett; and the Court, upon consideration of the facts and the applicable law and being fully advised in the premises, having concluded that the plaintiffs are entitled to a decree granting relief against the defendants and making provisions for further appropriate proceedings;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed: That plaintiffs B. Salvini and J. H. Evett are de facto directors of the Priest Rapids Irrigation District and that, until further order or decree of this Court as hereinafter provided for, said plaintiffs shall continue to function as directors of said district and in particular shall do any and all things necessary to the defense by said district against the petitioner in the condemnation action of

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

United States of America vs. Alberts, et al., Civil No. 128 in the United States District Court for the Eastern District of Washington, and necessary to protect otherwise the interests of said district; and that pursuant to vouchers approved by said de facto directors, the County Auditor of Benton County, Washington, shall issue warrants, and the County Treasurer of Benton County, Washington, shall pay said warrants, in the same manner and with the same effect as provided by the laws of the State of Washington with respect to vouchers approved by irrigation district directors.

It Is Further Ordered, Adjudged and Decreed that this Court retains jurisdiction of this cause for appropriate supervision of the administration of said irrigation district and for further appropriate proceedings directed toward dissolution of said district and distribution of the assets of said district.

It Is Further Ordered, Adjudged and Decreed that any award in the condemnation action, United States of America vs. Clements P. Alberts, et al., Civil No. 128, which may be ordered by the District Court of the United States for the Eastern District of Washington to be paid to the Priest Rapids Irrigation District, shall upon receipt by said district be paid into this Court, to be paid out upon order of this Court after further appropriate proceedings.

It Is Further Ordered, Adjudged and Decreed that within a period of sixty days after final decision in said condemnation action, including final

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)
disposition of any appeal or review proceedings
therein, said de facto directors shall report to this
Court the final decision in said condemnation action
and shall suggest, by petition to this Court, such
proceedings directed toward dissolution of the Priest
Rapids Irrigation District, appointment of trustees
and distribution of the assets of said district as shall
be deemed by them to be appropriate.

Done in open court this 1st day of August, 1946.

/s/ TIMOTHY A. PAUL,

Judge of the Superior Court.

A copy of said decree was furnished, informally
as he requested, to Bernard H. Ramsey, Special As-
sistant to the Attorney General of the United States,
and the attorney who, for the United States, on
May 1, 1946, filed in said cause No. 8035 the "Sug-
gestion of Interest to United States of America"
and who represented the United States in the mo-
tion for appointment of trustee or receiver and for
restraining order filed in the Federal District Court,
as recited in the order of this Court set forth above.

In accordance with this Court's decree entered in
said cause No. 8035 on August 1, 1946, ordering B.
Salvini and J. H. Evett, the de facto directors of the
Priest Rapids Irrigation District, to continue to
function as directors of said district and in par-
ticular to do any and all things necessary to the
defense by said district in the condemnation action

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

of United States of America vs. Alberts, et al., Civil No. 128 in the United States District Court for the Eastern District of Washington, and to protect otherwise the interests of said district, said B. Salvini and J. H. Evett have continued to function as directors of the Priest Rapids Irrigation District and have done all things necessary to the defense of said district in said condemnation action.

IV.

Said condemnation action came on for trial before said United States District Court on February 10, 1947, and on February 20, 1947, the jury rendered its verdict. The jury found that the just compensation to be paid for the taking of that portion of the properties of the Priest Rapids Irrigation District, not devoted and applied to irrigation purposes, was \$473,356. In answer to a special interrogatory, the jury found that the value of that part and portion of the properties of said district, devoted and applied to irrigation purposes, was \$365,845.

During the course of said trial, and in the absence of the jury, said district offered to prove that the Government had paid, in compensation awards, settlements, and deposits in Court only \$630,960.80 for all of the lands within said district, including all of the improvements on said lands as well as any crops growing thereon. Said offer of proof, made in the absence of the jury, was not made as an offer of evidence bearing on the value of said district's

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

own properties, but was made as an offer of evidence relevant and material to the legal issue of whether said district was entitled to compensation for all of its own properties, and in refutation of the Government's contention that the compensation paid for the lands within said district reflected the value of the properties of said district itself. The Government's objection to the offer of proof, made in the absence of the jury, was sustained and the offer rejected. Subsequently, the jury, by its aforesaid verdict and its aforesaid answer to the special interrogatory, determined that the total value of the properties of said district itself was \$839,201.

The said District Court's judgment on the aforesaid verdict gave judgment in the sum of \$473,356 against the United States and in favor of the Priest Rapids Irrigation District. Said District Court refused to allow any condemnation award for the so-called irrigation properties which have been valued by the jury in answer to the special interrogatory. Said District Court did order, adjudge and decree, regarding the \$170,500 which had been paid into court by the United States as the estimated just compensation for all of said irrigation district's properties, and which \$170,500 had been used to discharge the bonded indebtedness of said irrigation district, that said bonded indebtedness and said amount of estimated just compensation, \$170,500, were adjudged to be liquidated by the so-called ir-

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

riagation properties valued at \$365,845 but for which no compensation was to be paid to the Priest Rapids Irrigation District. From the judgment of said District Court the United States appealed and the Priest Rapids Irrigation District thereupon cross appealed.

V.

The United States Court of Appeals for the Ninth Circuit heard argument of said appeals on July 13, 1948; and on June 21, 1949, said Court of Appeals filed its opinion. Said Court of Appeals held that the lower court was in error in failing to provide in the judgment that the \$170,500 deposited by the Government should be applied as a credit against the award of \$473,356, and held that judgment against the Government for \$302,856 should be entered. The time allowed by law for the filing of a petition for writ of certiorari, seeking review by the Supreme Court of the United States of said appellate court's decision, expired on or about September 20, 1949, without any such petition for writ of certiorari having been filed and served by either the United States or the Priest Rapids Irrigation District. The decision of said Court of Appeals in said condemnation case has become final, and the Priest Rapids Irrigation District through its attorneys has taken appropriate steps in said District Court for further proceedings in conformance with said appellate court's decision; and in particular

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)
there was presented to said District Court for entry in said condemnation action, and signed and entered by said District Court on November 21, 1949, a deficiency judgment against the Government for \$302,856, together with interest, and there were filed in said action in said District Court on November 21, 1949, applications or petitions for payment to the attorneys of the district of the attorneys' fee in said condemnation action and for payment of said district's expenses, other than attorneys' fee, incurred in defense of said condemnation action.

VI.

The next to last paragraph of the modified judgment on verdict, entered by said District Court in said condemnation action on November 21, 1949, reads as follows:

“It Is Further Ordered, Adjudged and Decreed that said deficiency judgment of \$302,856.00, together with interest as above ordered, and the whole thereof, shall be paid into this Court and remain subject to the orders of this Court until such time as this Court shall order the payment of the balance of the same to the Superior Court of the State of Washington, in and for Benton County, for the use and benefit of the Priest Rapids Irrigation District in liquidation proceedings to be maintained in said Superior Court, and”

Defendants are advised and informed and believe, and defendants therefore allege, that said District

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

Court probably will defer payment of the balance of said condemnation judgment to the Superior Court of the State of Washington in and for Benton County until there has been adjudicated by said Superior Court, including disposition of any appeal therefrom, probable questions regarding the parties to whom the assets of the Priest Rapids Irrigation District should be distributed—except that said District Court probably will give consideration to such petitions or applications for payments from said condemnation award as may be deemed proper and be approved by said Superior Court as being necessary to meet expenses attendant to liquidation proceedings or other proceedings in said Superior Court.

VII.

Defendants are informed and believe and are advised and therefore allege that the Priest Rapids Irrigation District ceased to function, for the primary purposes for which it was organized and operated, on or about February 23, 1943, due to action by the United States, in the exercise of its war powers, more particularly described in the following paragraphs.

VIII.

On February 18, 1943, the Secretary of War pursuant to acts of Congress, and more particularly the Second War Powers Act, 1942, requested the Attorney General to institute condemnation proceedings to acquire fee simple title to certain described lands,

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

“to be utilized for the establishment of a military reservation, and for other military uses incident thereto,” and requested further, because “the utmost haste in expediting this project is vital to the successful prosecution of the war,” that the Attorney General “procure an order of the court granting immediate possession of the aforesaid lands.”

IX.

In accordance with said request, and pursuant to the authority of acts of Congress, and more particularly the Second War Powers Act, 1942, the United States on February 23, 1943, filed a petition for condemnation and a motion for right of immediate possession. On the same date, February 23, 1943, said District Court granted said motion and signed and entered an order granting right of immediate possession to certain described lands situated in Benton County, Washington, and containing 176,323 acres, more or less.

X.

Pursuant to a further letter, dated April 12, 1943, from the Secretary of War to the Attorney General, requesting amendment of said petition and order, to provide for acquisition of additional lands, an amended petition for condemnation was filed on April 22, 1943. On the same date, April 22, 1943, a motion for right of immediate possession on amended petition was filed in said District Court and said

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

District Court on the same date, April 22, 1943, signed and entered an order granting right of immediate possession as to additional property.

XI.

The lands described in said petition and amended petition, as to which the United States, by said orders of said District Court, was given the right of immediate possession, included all of the lands belonging to the Priest Rapids Irrigation District, both its so-called power properties and its so-called irrigation properties. The lands covered by said petitions and said orders of said District Court also included all lands owned by parties other than the Priest Rapids Irrigation District and located within the boundaries of said irrigation district.

XII.

Pursuant to said orders of said District Court giving the United States the right of immediate possession, the United States on April 1, 1943, took actual, physical possession of the so-called irrigation properties of the Priest Rapids Irrigation District, including the pumping plant and other parts of the irrigation district's distribution system; and took actual, physical possession of the so-called power properties of the Priest Rapids Irrigation District on October 1, 1943. Said dates of taking actual, physical possession pursuant to said orders granting to the United States the right of immediate

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)
possession, were stipulated by the Government during the trial of said condemnation action in said District Court.

XIII.

Upon the filing of said petition for condemnation and the granting of said order giving the right of immediate possession, on February 23, 1943, the Priest Rapids Irrigation District was able to function, for the primary purposes for which it had been organized and operated, only at the sufferance of the United States; and upon the United States' taking actual, physical possession of said district's irrigation properties on April 1, 1943, the Priest Rapids Irrigation District was rendered utterly unable to function for the primary purposes for which it had been organized and operated, all by sovereign action of the United States of America in the exercise of its war powers.

XIV.

After the United States commenced said condemnation proceedings and obtained said right of immediate possession to all of the properties of the Priest Rapids Irrigation District and to all of the lands within the boundaries of said district, and after the United States took actual, physical possession of the irrigation properties of said district on April 1, 1943, the United States took actual possession of the other properties of said district and of the tracts of lands within the boundaries of said

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

district, from time to time as suited the Government's needs or convenience in its establishment of the military reservation now known as the Hanford Atomic Energy Project.

XV.

The lands within the boundaries of the Priest Rapids Irrigation District, other than the lands owned by the district, were owned variously by individual farmers, the State of Washington, and other landowners, and were subject to assessments by said irrigation district up until that time on February 23, 1943, or not later than April 1, 1943, when the Priest Rapids Irrigation District, by sovereign action of the United States in the exercise of the war powers, was rendered incapable of functioning for the primary purposes for which said district had been organized and operated.

XVI.

Defendants are informed and believe, and are advised, and defendants therefore allege that the statutes of the State of Washington, under which the Priest Rapids Irrigation District was organized and operated as a municipal corporation, do not provide or contemplate any proceeding for winding up the affairs and distributing the assets of an irrigation district summarily rendered incapable of functioning for the primary purposes for which it was organized, by reason of all of the district's

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)
properties and all of the lands located within the boundaries of the district being taken by the United States for military purposes.

XVII.

In accordance with said order of August 1, 1946, in said cause No. 8035, defendants B. Salvini and J. H. Evett, as de facto directors of the Priest Rapids Irrigation District, have suggested to this Court in said cause No. 8035, by their petition re further proceedings therein, filed on November 23, 1949, that this Court having obtained and retained in said cause No. 8035 jurisdiction of the trust estate, made up of the properties of the Priest Rapids Irrigation District, including the right of the district to the condemnation award which stands in the place of the properties of said district which were taken in condemnation by the United States, this Court as a court of equity, in the absence of prescribed statutory procedure, has inherent power to administer the trust estate and see that it is distributed to the persons who are entitled to share in it; and that this Court in said cause No. 8035 may proceed either upon its own motion or upon the application of the trustees or beneficiaries.

XVIII.

Defendants B. Salvini and J. H. Evett, as said de facto directors, further suggested in said petition in said cause No. 8035, and here allege in the

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

above-entitled cause No. 9913, that in equity the Priest Rapids Irrigation District, for purposes of determining the persons who are entitled to share in distribution of said trust estate, should be deemed to have been dissolved, in effect or *de facto*, on or about February 23, 1943, and in no event later than April 1, 1943, and that in equity the trust estate should be distributed equitably among the persons who, by reason of their interest in lands located within the boundaries of said irrigation district, were members of the group really interested in the success of said district and had to meet the burdens of said district prior to the disruptive action taken by the United States, in February, 1943, in the exercise of war powers.

XIX.

Defendants allege that, as two of the last elected directors of said district and as the *de facto* directors of said district, B. Salvini and J. H. Evett are qualified to represent and appropriately can represent said district, and at least as against the adverse claim made by the United States, all of the persons who, by reason of their interest in lands located within the boundaries of the irrigation district, were members of the group really interested in the success of said district and had to meet the burdens of said district prior to the disruptive action taken by the United States in February, 1943, in the exercise of war powers. Defendants further allege that Richard S. Reierson, the other of the last elected

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)
members of the board of directors of said district, but who resigned from said office and served as secretary of said district from 1943 to date, is likewise qualified to represent and appropriately can represent said district, and at least against said adverse claim asserted by the United States, all of said persons. And defendants suggest that B. Salvini, J. H. Evett and R. S. Reierson should be appointed as liquidating trustees of the Priest Rapids Irrigation District to serve until further order of this Court.

XX.

The liquidating trustees of the Priest Rapids Irrigation District should be appointed by this Court in said cause No. 8035. The liquidating trustees of said district should be authorized to employ attorneys to render legal services necessary in further proceedings, upon terms subject to the approval of this Court; and said liquidating trustees should be authorized to incur other expenditures necessary in further proceedings, and said liquidating trustees should receive compensation for their services, all subject to the approval of this Court.

Wherefore, defendants pray as follows:

1. That the complaint and petition for dissolution in the above-entitled cause No. 9913 be dismissed for the reason that there is pending in the above-entitled Court, in said No. 8035, another cause involving the same subject matter and in which the

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

United States of America has had and does now have opportunity to seek such relief, if any, to which the United States may be entitled; or,

2. In the alternative, that the complaint and petition for dissolution in the above-entitled cause No. 9913 be dismissed for the reason that said complaint and petition do not state facts sufficient to constitute a cause of action; or,

3. In the alternative, that the complaint and petition for dissolution be dismissed; and

4. That the defendants have and recover their costs and disbursements herein.

Alternative to paragraphs 1, 2 and 3 of this prayer, and without waiving the objections and defenses involved therein, defendants pray that this Court in the exercise of its equity jurisdiction in the above-entitled cause;

5. Appoint B. Salvini, J. H. Evett and R. S. Reierson liquidating trustees of the Priest Rapids Irrigation District, to serve until further order of this Court;

6. Authorize the liquidating trustees of the Priest Rapids Irrigation District to employ attorneys for legal services in further proceedings in the above-entitled cause and related causes, upon terms subject to the approval of this Court;

Petitioners further pray, as part of said alterna-

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)
tive, that this Court order, adjudge and decree that:

7. (a) The Priest Rapids Irrigation District was, in effect or *de facto*, dissolved on or about February 23, 1943, and in any event no later than April 1, 1943;

(b) There is no prescribed statutory procedure or provision for winding up the affairs of the Priest Rapids Irrigation District and distributing the trust estate to the persons who are entitled to share in it, and this Court, as a court of equity, has inherent power to administer the trust estate of the Priest Rapids Irrigation District and see that it is distributed to the persons who are equitably entitled to share in it;

(c) The persons entitled to share in the trust estate of the Priest Rapids Irrigation District are those persons who, by reason of their interest in lands located within the boundaries of the irrigation district, were members of the group which was really interested in the success of the Priest Rapids Irrigation District and had to meet the burdens of said district prior to the disruptive action taken by the United States in February, 1943, in the exercise of war powers;

(d) The liquidating trustees proceed to investigate records and report to this Court the names of said persons and their respective holdings of lands within the boundaries of said irrigation district on or about February 23, 1943, and in no event later

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

than April 1, 1943, and proceed also to suggest to this Court such further proceedings and forms of notice thereof as shall be deemed by said liquidating trustees to be appropriate.

PRIEST RAPIDS

IRRIGATION DISTRICT,

A Municipal Corporation of the State of Washington, by B. Salvini, *de facto* President and Director,

B. SALVINI,

J. H. EVETT,

By J. K. CHEADLE,

Of Attorneys for Defendants.

/s/ R. S. REIERSON.

State of Washington,
County of Spokane—ss.

We, R. S. Reierson and J. K. Cheadle, the latter being of attorneys for defendants including J. H. Evett who is absent from the State of Washington, and B. Salvini who is not present in Spokane County, being first duly sworn on oath, depose and say: That we have read the within and foregoing Answer and Counter Petition, know the contents thereof and believe the same to be true.

/s/ R. S. REIERSON.

/s/ J. K. CHEADLE.

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

Subscribed and sworn to before me this 29th day of December, 1949.

JANE A. THOMPSON,

Notary Public in and for the State of Washington,
Residing at Spokane.

Copy received 12-30-1949—Hart Snyder.

Filed Jan. 4, 1950.

In the Superior Court of the State of Washington
For Benton County

No. 9913

IN THE MATTER OF THE DISSOLUTION OF
PRIEST RAPIDS IRRIGATION DIS-
TRICT, et al.,

Plaintiff,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,
et al.,

Defendant.

CERTIFICATE

I, Fred D. Kemp, County Clerk, and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Answer and Counter Petition, filed Jan.

(Testimony of Charles L. Powell.)

Petitioner's Exhibit No. 16—(Continued)

4, 1950, in the above-entitled action, as the same now appears on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court this 4th day of January, 1950.

FRED D. KEMP,
Clerk.

[Seal] By /s/ BESS ROYER,
Deputy.

Q. (By Mr. Cheadle): Mr. Powell, would you state to the Court, please, briefly, some of the history of the Priest Rapids Irrigation District, having in mind that part of the history which was put in issue, discussed and testimony about it adduced in the condemnation trial?

A. The action, the United States of America vs. Clements P. Alberts and others, cause number 128 in this court, was started on February 23, 1943. Shortly after that a notice was sent out to all of the land owners within the perimeter description shown in the original petition and the order for immediate possession, and immediately thereafter the irrigation district became concerned about its properties, particularly its power plant. At that time the power plant was not included in the condemnation proceeding, but was shortly after in the next petition filed. The irrigation district owned

(Testimony of Charles L. Powell.)

a power plant which was not used exclusively for the irrigation of its properties. The district sold surplus power to the Pacific Power and Light Company, and the question involved from the inception of the case was whether or not the irrigation district would be compensated for the value of its property over and above the values paid to the individual property owners.

The question was tried out in three or four different proceedings, and in order to get the matter at issue before the Court, while we weren't required to do so, in [89] behalf of the irrigation district we filed two or three answers, to which the government demurred, and we argued the matter of the main questions before the court here, before Judge Schwellenbach. The last argument before him was concluded in June of 1945, just before he went to Washington, D. C., as Secretary of Labor, and he handed down his memorandum opinion at that time which has been the basis of what's called the Schwellenbach formula; and from June, 1945, until his Honor's appointment in early 1946, I believe, there was no District Court Judge and therefore no proceedings, and shortly thereafter the proceedings were again brought up before the court and a date of trial was set in February, 1947.

The irrigation district was financially involved because of its indebtedness and outstanding warrants, and the exhibit, I believe 12, will show that there were warrants or had been warrants outstand-

(Testimony of Charles L. Powell.)

ing for some time; in fact, the exhibit will disclose that there was about 30 per cent paid in interest on a number of the warrants. The government in taking the property paid into court as estimated just compensation \$170,500, which was—

Q. If I may interrupt, Mr. Powell, when was it the government paid that into court?

A. In May of 1944; the exact date I do not remember.

Q. Well, the properties had been taken the preceding year of [90] 1943, is that it?

A. Possession of the irrigation properties on or about April 1, 1943, and possession of the power plant and transmission line on October 1, 1943; then the irrigation district paid from its funds the warrants with interest and some of the bonds and coupons, and depleted its own funds, thereby reducing the amount which the government would be required to pay in order to liquidate the remainder of the indebtedness, and so when we were discussing—

Q. If I may interrupt you there, when you say the amount the government would be required to pay in order to liquidate the indebtedness, you're stating there the amount the government would be required to pay per the government's intentions set forth in the declaration of taking, is that right?

A. Yes, and in the letter of the Secretary of War which accompanied the declaration of taking, it being framed on a different theory than declara-

(Testimony of Charles L. Powell.)

tions of taking ordinarily are framed; the theory was that since the government owned all of the land in the irrigation district, it became in effect the owner of all of the stock, as though this were a corporation, and therefore was not required to pay anything for the property of the irrigation district, that is, property owned by the district, so when the funds of the district were depleted and we came up to the time of trial [91] and the determination of the value of the irrigation district property, there was no money with which to pay the expert witnesses' expenses or fees, and no money to pay the other expenses of litigation, and it was necessary at that time that money be raised to do that, and necessary to sell the certificates of indebtedness at a discount and find somebody who would buy them, because even the payment of the certificates of indebtedness was contingent. We had at the time the contract was made the question of first, whether we could finance the litigation, and second, whether we would be successful in establishing and sustaining the Schwellenbach formula in this court and on appeal, and if we were successful, whether the jury's award would be of sufficient amount or substantial in that regard.

Q. Mr. Powell, going back to 1943, you were in court yesterday and heard the testimony of Mr. Reierson? A. That's correct.

The Court: The declaration of taking was filed in 1944?

(Testimony of Charles L. Powell.)

A. May, 1944.

Q. Handing you petitioner's Exhibit Number 4, being the minutes of the June 10, 1943, meeting of the Priest Rapids board, I ask, was the agreement—well, was there an agreement reached with Moulton & Powell by the District as [92] stated in those minutes? A. Yes, there was.

Q. Did that agreement reached contemplate the services of Moulton & Powell in the test cases made up of certain individual landowners' cases to which Judge Schwellenbach, as shown in the transcript of record, referred to as being agreed upon among counsel and with the court in what would have been a pretrial conference had the Federal rules applied to condemnation, and that had taken place in the summer of 1943?

A. Would you mind reading that?

The Court: It's a question beyond me.

(Whereupon, the reporter read the pending question.)

The Court: Well, as somebody said in Hamlet, I think it's too long.

Mr. Cheadle: I fully agree, your Honor.

The Court: Why not ask Mr. Powell what was the contemplation of the parties at the time they made the contract?

Mr. Ramsey: May I ask what the purpose of this line of inquiry is? We have a contract here, then we have some minutes. Now we're going into the understanding outside of the contract and the

(Testimony of Charles L. Powell.)

minutes. Are we trying to vary the terms of the contract by the minutes of the board of directors and by the testimony of one of the contractual [93] parties? Is that the purpose?

The Court: Go ahead, Mr. Ramsey.

Mr. Ramsey: Well, I'm just inquiring of counsel. Frankly, I don't know where we're headed for.

Mr. Cheadle: The answer to your question is, no, we are not seeking to vary the terms of the contract. We are proposing to show your Honor that an agreement with the District was reached in June of 1943 by Moulton & Powell, as set forth in the minutes of the June 10 meeting. We have also introduced documentary evidence which shows that warrants for payment of the \$2,000 were drawn by the District and signed by Mr. Moulton on June 12, I believe, 1943. We are also showing what the work contemplated was, and we propose to submit, in view of documentary evidence and testimony, that the contract which is dated October 30 is the contract reduced to writing which sets forth the agreement reached June 10, and the record, the documentary evidence, does show that the payments which that contract dated October 30 states will be made in fact were made before then, and the contract itself refers to proceedings contemplated. Parol evidence would be admissible to show what proceedings were contemplated, and in further response to Mr. Ramsey's objection we can voice our objection, your Honor; we submit the government has no standing to question this petition. [94]

(Testimony of Charles L. Powell.)

Mr. Ramsey: I'd be interested in listening to counsel's reason for taking that position.

Mr. Cheadle: I can state it very briefly. Mr. Ramsey has no standing, the government has no standing to question this petition without the government begging the question, your Honor, that question which is pending in the Benton County proceedings, which has not been decided.

The Court: Well, I'm permitting the government to object here. I think we won't take much time on that question. I think Mr. Ramsey's position, as I understand it, is that here you have a contract, this \$2000 fee contract, according to the terms of which Moulton & Powell are to do all the work and perform all the services in connection with the litigation growing out of the taking of the District's property by the government. Now, Mr. Ramsey's point is, and I'm curious about it, too, what is your position with reference to that prior contract; if the contract means what it says, would there be any consideration for the later one? Is that your position or one of your points, Mr. Ramsey?

Mr. Ramsey: Yes.

Mr. Cheadle: We call attention, your Honor, to the fact that the contract——

The Court: The earlier one?

Mr. Cheadle: The earlier one, yes, your Honor, provides that "rendered by them as well as services to be rendered by them in connection with said litigation except that in the event that services not

(Testimony of Charles L. Powell.)

heretofore contemplated shall be required of attorneys, such additional compensation will be paid as the board of directors of District may deem proper and not otherwise." We submit the documentary evidence, likewise the testimony of those who were parties to the contract, shows what they contemplated. We submit that is certainly admissible.

The Court: All right, on that theory I'll permit you to show what was contemplated.

A. May I state it?

The Court: Just a moment; Mr. Ramsey, you may state any further objection you have.

Mr. Ramsey: In that connection, if the Court please, the contract itself provided—

The Court: You mean the \$2000 contract?

Mr. Ramsey: Yes.

The Court: The straight fee contract, we might call it, and the other the contingent contract.

Mr. Ramsey: The straight fee contract provided "except that in the event that services not heretofore contemplated shall be required of attorneys, such additional compensation will be paid as the board of directors of District may deem proper and not otherwise." Now, who [96] is to determine, who is to say what services were not in contemplation on the 30th day of October, 1943, when this contract was drawn? This is a matter involving the board of directors of the District hiring an attorney. Now, is the attorney to be permitted to testify as to what was in contemplation in the mind

(Testimony of Charles L. Powell.)

of the District in this matter? It's left entirely to the District what further compensation shall be paid, if any.

The Court: Well, it seems to me that in the interest of orderly procedure, that I shouldn't try to decide this lawsuit on objections to the admission of evidence. I think within reason that the parties here should be permitted to put in the proof that supports their theory, and then I'll decide the effect of it and the questions of law at the conclusion of the case. The objection will be overruled, and you may answer.

Mr. Ramsey: Very well, your Honor.

A. (Witness): That work in contemplation of the parties at the time of the original contract was work pertaining to the irrigation district property and the government's assertion of rights against it as it was then pending. There was no declaration of taking filed at that time against the irrigation district properties, and therefore there was no condemnation action directly brought against the district properties, therefore it was not in the contemplation of the parties at that time the condemnation action and the questions later passed on which resulted in the Schwellenbach formula. That is why that provision is in the contract, and it is my recollection that we always discussed with the board of directors that when we knew what the government was going to do there would be a contingent fee contract.

Q. I'll ask this further question, Mr. Powell:

(Testimony of Charles L. Powell.)

Did the parties in that first contract, in the agreement stated in the June 10 minutes, June 10, 1943, minutes, contemplate the work of Moulton & Powell in connection with those test cases in which the matter of valuation of the district's own properties would be raised by way of offers of proof in those individual landowners' cases?

A. That was within the contemplation of the parties at that time, yes, because about that time, the exact date I don't recall, we had had a pretrial conference with Judge Schwellenbach and had tentatively agreed upon a method of presenting the questions.

Q. I believe you've already testified, Mr. Powell, that the District was organized about 1918?

A. I don't think so, but my recollection is that it was.

Q. Did it take over properties of earlier irrigation districts or companies which had been operating in the same area? [98]

A. Well, it didn't take them over right away; the District was organized some considerable time before it acquired the properties, and it was in 1930, I believe, that the irrigation district acquired the power plant and transmission line.

Q. You stated that the declaration of taking in 128-99 was filed in May of 1944. Were there further proceedings before Judge Schwellenbach, perhaps in chambers, in April which finally led to the filing of that declaration of taking?

Mr. Ramsey: I object to that question, if the

(Testimony of Charles L. Powell.)

Court please. In 1943 the government started filing the declarations of taking. The law wouldn't have required that any declaration of taking be filed at all; condemnations have been carried through without ever filing any declaration of taking; that is a matter strictly within the control of the government itself. Now, to question whether a conference between counsel and a judge in chambers led to the filing of a certain declaration of taking is completely outside the scope of reason.

The Court: Well, I'll sustain the objection to the question in that form. You might be permitted to say what was done or what proceedings were had or what pronouncement made by Judge Schwellenbach, without asking the witness to draw conclusions regarding it. [99]

Mr. Cheadle: Perhaps only for the benefit of our expert witnesses, your Honor, I suggest that this might be put into the record, re this petition, if I would read from page 82 of the transcript of record on appeal.

The Court: In this same case?

Mr. Cheadle: In this same case, your Honor, the transcript of record on appeal, No. 128-99, at page 82 of volume I of the three volumes of that transcript, it being the letter of May 4, 1944, addressed to the Attorney General, signed by the Secretary of War, Henry L. Stimson, the paragraph appearing on page 82 reading: "This Department has been recently advised that unless the declaration of taking covering the irrigation district's

(Testimony of Charles L. Powell.)

property and facilities is filed before June 1, 1944, the court will entertain a motion to set aside all verdicts returned during this term of court, and will permit in the future the defendant in all cases to show the value of the District's properties and facilities. It is the recommendation of this department that the declaration of taking enclosed herewith be filed immediately." And likewise appears in the same volume—I'm sorry, I don't have my marker in there, there appears the reporter's transcript of the proceedings before Judge Schellenbach in April, 1944, in which he gave that advice.

Mr. Ramsey: And in the same transcript appears [100] repeatedly the statement made to the Court by government counsel that the government contemplated at all times filing a declaration of taking covering the taking of the district's properties as soon as all of the properties in the district had been covered by declaration of taking. Now, there never was any question of anything here except the time of the filing of that declaration of taking. The government was committed in the very first conference in the Judge's chambers in 1943 to do that very identical thing. Counsel stated to the Court at that time that the privately owned properties within the district would be acquired, a declaration of taking would be filed, deposits of estimated just compensation would be made, and that following the filing of the declaration of taking on the privately owned property that a declaration of taking would be filed covering the district owned prop-

(Testimony of Charles L. Powell.)

erties, so I don't know what counsel's purpose is in attempting to inject into the record here that somebody compelled the government to file a declaration of taking, or that it was brought about through the services of these attorneys.

The Court: Well, it would appear from the document counsel has read that there was, to say the least, gentle urging on the part of Judge Schwellenbach.

Mr. Ramsey: Yes, we had gentle urging on Judge Schwellenbach's part from the time of the first declaration [101] of taking; it was consistent.

Mr. Cheadle: Regarding that, we are content to let the record on appeal speak for itself.

Q. (By Mr. Cheadle): In the summer of 1944 were there conferences with the state and with government counsel regarding payment of the bonds out of the monies which had been deposited in court in the May declaration of taking?

A. I don't recall the exact date, but the state of Washington was the owner of the majority of the outstanding bonds of the district, and in a session here in Yakima with a representative from the Attorney General's office and I think all the directors and the secretary, an arrangement was made to withdraw the estimated just compensation and pay it to the state of Washington on the bonds and have the bonds delivered to the clerk of the court for marking as paid, and that was done then. I've forgotten the date of it; it was sometime, I think, in the early fall of 1944.

(Testimony of Charles L. Powell.)

The Court: I might say, Mr. Ramsey, regardless of what the purpose of the offer may be, I'm not taking it as any evidence of whether the government did or did not act fairly, properly or justly. That question isn't before me at this time, certainly.

Mr. Ramsey: I understand that.

The Court: I'm not taking any position on that at all, and I don't intend to. Go ahead. [102]

Q. (By Mr. Cheadle): You referred to the demurrer which the government made to the District's answer, and which was argued before Judge Schwellenbach and he decided by memorandum opinion in June of 1945. Then is it correct the District filed an amended answer in about September of that year?

A. That's correct, yes.

Q. And the government then demurred in about October of 1945?

A. That's correct, and that matter was heard before Judge Driver in this court and continued to Spokane, where it was heard on May 31 and June 1 of 1946.

Q. It would be more correct to say that what was argued here on May 15 was only the government's motion to enjoin the Benton County proceedings, and that the demurrer was argued in Spokane on May 31 and June?

A. I thought they were both argued pretty well together; I didn't recall that they were separated.

Q. How long did the trial take, do you recall?

A. The total elapsed time as I recall was eleven days, from February 10, 1947, until February 20,

(Testimony of Charles L. Powell.)

1947, inclusive, with a weekend intervening of Saturday and Sunday in which the court recessed.

Q. Very briefly what did your work in preparation for trial consist of?

A. Well, we had to find witnesses who were experts in fixing [103] the value of power properties, and we discussed the matter generally with five or six engineers, and I was in conference repeatedly with a number of them, some of them not for a very lengthy time; one engineer from Oregon, Medford, I believe, we employed and he examined the district and then later was sent to South America and couldn't accept employment. I spent two days interviewing Mr. Dibble, from Redlands, California. I had to go to Butte to see him before the trial, and he came here and went over the properties; I spent two or three days with him, a day or so with Hugh Tinling, two or three days with Gerald Hall of Yakima, and a day or two with Mr. Stevens of Portland; they were the three witnesses we used principally in the case, and there was the preparation of exhibits also, which was done under their supervision and under our direction.

Q. Was the requirement of having expert testimony apparent in the summer of 1946?

A. Yes, it was.

Q. Was it then apparent that there would be, if the Schwellenbach formulat should be applied in the trial, was it apparent that there would be a necessity of having an allocation of the value of

(Testimony of Charles L. Powell.)

the power properties between irrigation and commercial power? A. Yes. [104]

Q. Did you also work on the appeal of this case to the Court of Appeals?

A. Yes, I did; Mr. Cheadle and I conferred repeatedly on the brief and the questions on appeal.

Q. Have you estimated, Mr. Powell, roughly the amount of time in hours which you spent on 128-99, or let us say on the Priest Rapids Irrigation condemnation case; 128-99, that docket number, did not develop until May of 1944, of course.

A. Well, I've made an estimate, but I'd rather not state it, because it doesn't seem to me as though it is—I might err either way; I didn't keep track of my time, I did not make any listing of the time that I consumed.

Q. Did it seem likely in the summer of 1946 that there would be an appeal in the case?

A. Yes, it did.

Q. Did it seem probable that the case might be carried to the Supreme Court of the United States?

A. Well, that of course no one could tell at that time. We thought that there was a possibility of it.

Mr. Cheadle: You may inquire.

Cross-Examination

By Mr. Ramsey:

Q. Mr. Powell, the firm of Moulton & Powell were attorneys for the Priest Rapids Irrigation District for a considerable time before 1943, were they not? [105] A. Yes.

(Testimony of Charles L. Powell.)

Q. On a contingent fee basis?

A. No, not before that, no.

Q. Not before that period?

A. I think on a retainer; I've forgotten that now, but Mr. Moulton looked after that principally; I think there was a small retainer of something like \$20.00 a month, as I recall.

Q. A monthly retainer fee; and how long a period before 1943 approximately had that arrangement existed?

A. Well, approximately six or eight years.

Q. For six or eight years the firm of Moulton & Powell handled all of the legal work for the District and had been on a monthly retainer?

A. That's my recollection, yes.

Q. Now, speaking of these test cases, do you remember what individual cases were there that were involved?

A. You mean the names of the property owners?

Q. Yes. A. Yes, I do.

Q. That was Mr. Parks?

A. Alec Parke.

Q. Mr. Deitrich?

A. Yes, John Deitrich and his son and daughter.

Q. And Mr. Wright? [106]

A. C. I. Wright, that's correct, and Winfield Shaw was the fourth one.

Q. The four individual cases were brought on for trial in a group? A. That's correct.

Q. The firm of Moulton & Powell represented

(Testimony of Charles L. Powell.)

Mr. Parke, Mr. Deitrich, the Deitrichs, and Mr. Shaw, did they not?

A. No, Mr. Wiehl represented Mr. Shaw and Mr. Wright; we represented Mr. Parke and Mr. Deitrich. The Deitrich tract, incidentally, was a Richland Irrigation District tract.

Q. Yes, I remember that. The firm of Moulton & Powell represented Parke and the Deitrichs?

A. That's correct.

Q. You were employed by the land owners in those cases? A. That's correct, yes.

Q. And you were paid an attorney fee by the land owners in those cases?

A. Yes, we were.

Q. So the testimony of Mr. Reierson yesterday that the \$2,000 here was paid or in part paid to you for the purpose of trying these cases was erroneous, was it not?

A. Well, may I explain that by saying that in those cases Mr. Wiehl was paid also, but the District paid Mr. Wiehl a fee of \$300.00 for handling the Wright tract in the case, [107] that being a small non-irrigated tract, and the purpose of it being to compensate the attorneys for the additional work and effort necessary in presenting the issue to the Court by way of the offer of proof. The thought was not to pay the attorneys for handling the privately owned tracts, but to pay the attorneys for doing the work necessary to present the Irrigation District problem in the case involving the valuation of the privately owned tracts.

(Testimony of Charles L. Powell.)

Q. Now, Mr. Powell, if the matter of the value of the irrigation assets had been resolved in favor of the land owners, if they had been permitted to present to the jury their theory of the added value to their land because of those assets, the land owners would have directly benefited therefrom, wouldn't they?

A. I assume they would, Mr. Ramsey. That's a little bit difficult to say, but obviously, therefore, we were working against our own interests in that respect.

Q. The District didn't stand to make a dime out of this thing regardless of how it was determined, did they?

A. Out of the first, the preliminary matters?

Q. Yes.

A. Only in that they were trustees for the benefit of the land owners of the district.

Q. Well, as attorney for that District had you ever taken the [108] position that because they were trustees for the land owners in that District that it was any part of their duty to finance any litigation for the land owners?

A. Well, we've done even more than that; the Irrigation District has done a lot of things for the land owners at our suggestion and request.

Q. Unquestionably, but has there ever been a case where the District has found it proper or right to finance litigation on behalf of the land owners?

A. As a general proposition, no.

Q. Now, I assume that the attorney fee that

(Testimony of Charles L. Powell.)

you received from Mr. Parke and the Deitrichs in this case was adequate?

A. Well, it was in accordance with our agreement, yes, sir.

Q. Yes, but—

A. It compensated us, yes, sir; we have no complaint.

Q. Quite thoroughly for your time involved?

A. Well, we did some additional work in connection with the case on account of this irrigation problem.

Q. Well, frankly, Mr. Powell, it was the contention of the individual land owners, wasn't it, that they were entitled to extra value on their land by reason of the assets of the District, over and above the market value of the land?

A. That's correct.

Q. So that it was an issue of value in the individual cases which would result in a benefit to the land owners rather [109] than the District that you were presenting in putting forth your offer of proof there?

A. As a general proposition I presume that's correct.

Mr. Ramsey: Yes; I think that's all.

The Court: Any further questions?

Redirect Examination

By Mr. Cheadle:

Q. Mr. Ramsey inquired whether you were aware of any other cases where a District has

(Testimony of Charles L. Powell.)

financed litigation regarding land owners. Are you familiar with the so-called Sunnyside cases, United States against—I'm sorry, Fox, Parks and Ottmil-ler against Ickes?

A. No, I'm not except just generally, and I understood Mr. Chaffee was paid in that case on a per acreage basis which was added to the assessments of the District. I didn't know the District financed it.

Q. Are you familiar that the questions in that case were of considerable consequence to the District? A. Yes.

Q. And all of its land owners; and were those test cases selected by the government and the District, or do you know? A. I don't know.

Q. Mr. Ramsey inquired as to whether the compensation in the first contract was adequate. Did you or did you not mean that it was adequate for the work done in connection with [110] those test cases? A. State that again, please.

(Whereupon, the reporter read the pending question.)

Q. The individual land owners' cases.

A. Yes, it was adequate for the work done in the individual land owners' cases.

Q. Was it the compensation in amount agreed upon between you and the District on or about June 10 and reflected in the June 10 minutes?

A. You're referring to the compensation paid by Mr. Deitrich and Mr. Parke, or the compensation paid by the District?

(Testimony of Charles L. Powell.)

Q. No, I'm referring to the \$2,000. My question perhaps was ambiguous. I'm referring to the \$2,000 paid by the District to Moulton & Powell; was that adequate compensation for that work for the district contemplated by the parties on June 10?

Mr. Ramsey: Just a moment; before that's answered may I have that question again? I'm not sure I understood it.

The Court: I think what counsel is concerned about, you're not saying that was adequate compensation for all the work you've done in this condemnation case, including the appeals?

A. Oh, no, that's not what I understood the question to be, but I certainly wouldn't consider it so. [111]

Mr. Ramsey: I wouldn't assume so.

Mr. Cheadle: That's all.

(Whereupon, the witness was excused.)

Mr. Cheadle: Your Honor, if counsel will permit and the Court will permit, I would file the affidavit which I have prepared, executed last week and supplied copies to Mr. Shefelman as he stated; I think it should be filed if for no other reason than to have in the record the basis in part of Mr. Shefelman's testimony.

The Court: Have you seen the copy of that affidavit, Mr. Ramsey?

Mr. Cheadle: I just placed it on counsel's table this morning.

The Court: I see. Well, the Court will recess for ten minutes and then resume.

(Short Recess.)

The Court: Did you have the affidavit marked for identification by the Clerk?

Mr. Cheadle: I propose, your Honor, to offer it as an exhibit, and I propose to stipulate that were I to testify I would testify, among other things, to what appears in the affidavit.

(Whereupon, affidavit of Mr. Cheadle was marked Petitioner's Exhibit No. 17 for identification.)

Mr. Ramsey: If the Court please, for the purpose [112] of the record I want to object to the affidavit as being incompetent, irrelevant and immaterial. The objection is not predicated upon the grounds that the witness is present and could testify, nor is it predicated upon the grounds that we haven't the opportunity for cross-examination. I'm assuming that the Court can go through that affidavit and have no difficulty in determining what parts of it are pertinent, and it's really for the purpose of the record that I'm interposing the objection, in order to save any rights that we might have to object to incompetent portions of the record.

The Court: Well, I think it should be admitted if for no other purpose than in order to make complete the testimony of the expert Mr. Shefelman who said his testimony was based in part on the affidavit, and the record may show this is the affi-

davit he testified he referred to; for what further purposes, I'll take up when I read it. I haven't read it yet.

Mr. Ramsey: Well, frankly, I haven't either, your Honor.

(Whereupon, Petitioner's Exhibit No. 17 for identification was admitted in evidence.)

PETITIONER'S EXHIBIT No. 17

In the District Court of the United States for the Eastern District of Washington Southern Division

No. 128-99

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS, et al., and PRIEST RAPIDS IRRIGATION DISTRICT, a Municipal Corporation of the State of Washington, Defendants.

AFFIDAVIT OF J. K. CHEADLE IN SUPPORT OF PETITION FOR PAYMENT OF ATTORNEYS' FEE

State of Washington,

County of Spokane—ss.

J. K. Cheadle, being first duly sworn on oath, deposes and says that:

In September 1945 Moulton & Powell conferred

(Petitioner's Exhibit 17—(Continued)

with me regarding the above-entitled case, and proposed that I assist them in preparation and presentation of the case.

On October 8, 1945, I commenced work on the Prid case. In the following 4 years (through November 21, 1949) I worked for more than 1000 hours on this case.

The case had priority over any and all other matters handled by me in that 4-year period; and frequently, especially in 1947, 1948 and 1949, giving the Prid case priority required that I "farm out" or turn over other law practice to other attorneys, or associate other counsel in other practice.

In October 1945 I spent about 65 hours in research in the law of eminent domain, with particular emphasis on federal statute and case law bearing on declarations of taking and bearing on condemnation actions in which immediate possession was taken, prior to the making of a deposit in court, pursuant to the provisions of 50 U.S.C.A. 171, et seq. (Second War Powers Act, 1942).

We were confronted with the Government's contention, made in connection with the Government's demurrer to the district's answer, that the district officials were not qualified to represent the district and to defend the action. And we were compelled to give consideration to such appropriate steps as might be taken to meet that contention of the Government. Since the district is a municipal corporation of the State of Washington, its existence and

(Petitioner's Exhibit 17—(Continued)

the qualifications of its officers were matters of state law. And since no irrigation district theretofore had been placed in the situation which resulted from the condemnation proceedings of the United States, the questions of state law as well as the questions of federal condemnation law were novel and unique. The novel and unique situation was recognized by Judge Schwellenbach in his memorandum opinion of June 1945, in which he announced his ruling sustaining the Government's demurrer to the district's original answer in the condemnation action. Our initial task was obtaining a different ruling on the Government's demurrer to the district's amended answer.

On November 1, 1945, I conferred for 3.25 hours with C. L. Powell; on November 2 and 3 made detailed examination (3.5 hours) of the voluminous court files in the clerk's office at Yakima; and on November 5 conferred for 4 hours with Moulton & Powell. Subsequently in November I prepared a first draft of brief (24 hours) in opposition to the Government's demurrer.

Also in the latter part of November, I commenced research in federal and state cases on intervention (4.5 hours)—it appearing that as "an anchor to windward" we should have a landowner (in a representative capacity) seek to intervene in the condemnation case, so that in the event the Government's demurrer to the amended complaint should be sustained on the ground that the district's officers

(Petitioner's Exhibit 17—(Continued)

were not qualified to act in defense in the condemnation action, the district and its former landowners would be represented by the intervening land-owner.

On December 1, I traveled to Kennewick; and conferred with Moulton & Powell for 3 hours. Subsequently further work re intervention was performed by me in Spokane. Also, research and drafting of the complaint was commenced on a contemplated proceeding in the Benton County court, in which proceeding we might seek adjudication by the state court re the qualifications of the district's directors to act for the district (8 hours).

On December 18, 1945, Mr. Powell made a trip to Spokane; and on that day and the following day Mr. Powell and I conferred for a total of 5.5 hours.

In the latter part of December further work was performed in research and in further drafting of our brief in opposition to the Government's demurrer (27.5 hours).

During the last three months of 1945 and the first several months of 1946 the work on Priest Rapids matters was alternately under pressure and out from under pressure of time. Due to the fact that Judge Schwellenbach's vacated position on the district court had not been filled, there was uncertainty as to when the Government's demurrer would come on for hearing, it being informally agreed by counsel for the Government and by us that in the interest of all concerned the demurrer preferably

(Petitioner's Exhibit 17—(Continued)

should be heard by the same judge who probably would conduct the trial, if the demurrer should be overruled and the case go to trial.

Throughout January, February, March and April of 1946 much time was spent in putting into final form our brief in opposition to the Government's demurrer, and in final drafting and filing of the petition in intervention and writing a brief in support of intervention. During the same time much work was done on the Benton County case (Wright, et al. v. Chapman, et al., No. 8035). However, the time spent in representing Wright and the other plaintiffs in the Benton County case is not taken into account in the work performed in the condemnation case for the district, and is not reflected in the statement earlier in this affidavit that over 1000 hours work were performed by me in the condemnation case. The Benton County proceeding was deemed a part of the condemnation case work only through the preliminary stage, at the conclusion of which preliminary stage we concluded that the county court proceeding should be instituted.— Exclusive of the work in the Benton County case, my work in January, February, March and April of 1946 totaled approximately 200 hours.

During those months Mr. Powell and I conferred in Kennewick on January 22 and 23 for about 10.5 hours; and on February 9, 10 and 11 in Spokane for approximately 10 hours. Also, Mr. Powell and I conferred by telephone once a week or more fre-

Petitioner's Exhibit 17—(Continued)

quently, for probably a total of one hour per week.

On May 6, 1946, the Government filed a motion in the condemnation case for appointment of receiver or trustee of the district and for a restraining order enjoining any further proceeding in the Benton County case. On a show cause order, that motion came on for hearing before the Federal court in Yakima on May 15, 1946. Considerable time was spent in preparing a return to the rule, a brief, and in preparing reply to the Government's brief; and a half day in court was also involved. However, although this aspect of the Benton County case (*Wright v. Chapman*) involved work in the Federal condemnation action, my time and efforts on this matter have not been considered as work in the Federal condemnation action.—The court took the Government's motion under advisement at the conclusion of the May 15 hearing; and at a later court hearing in Spokane on June 1, 1946, the court announced its decision that the Government's motion be denied.

The Government's demurrer and a landowner's motion for leave to intervene were argued in Spokane on May 31 and June 1; and in the latter part of May considerable last-minute research and preparation work was done (18.5 hours).

Mr. Powell came to Spokane a day before the hearing; and we conferred on May 30 for 5.5 hours. Each of us was occupied with the hearing and with further preparation between court sessions, for a

Petitioner's Exhibit 17—(Continued)

total of 12 hours on May 31 and June 1, 1946.—The United States district court at the conclusion of the hearing on June 1 denied the Government's motion which had been argued in Yakima on May 15; and since the district court concluded that the state court proceeding should not be interfered with by the federal court and that the district's directors could and would continue to conduct the defense in the condemnation action on behalf of the district and its former landowners, the court denied the motion by a landowner for leave to intervene. More importantly, the United States district court overruled the Government's demurrer to the district's amended answer in the condemnation case.

In the balance of June, preparation was made for trial in the Benton County case, which was heard before Judge Paul on July 12, 1946, at Prosser. Judge Paul signed his decree in the case on August 1, 1946; and the decree granted the relief prayed for by the Priest Rapids Irrigation District and the other plaintiffs. My time in June and July on the Benton County case has not been recorded as time spent in Prid's Federal condemnation action.

In August 1946 we commenced preparation for jury trial of the Federal condemnation action. This work involved selection of and conferences with expert witnesses, and preparation on the many evidence questions which we anticipated would arise in the course of trial. Since irrigation distribution works are not frequently sold the questions involved

Petitioner's Exhibit 17—(Continued)

in valuation of the district's distribution works were not the usual questions encountered in the general run of condemnation actions. The valuation of the district's power plant in many respects was comparable to valuation of power plants as involved in condemnation of privately owned utilities by PUDs. However, the valuation of the district's power properties did have the complication arising from the fact that the power properties were used in part for furnishing irrigation pumping power and otherwise were used to produce power for sale commercially. Many of the evidence questions we anticipated were the usual evidence questions involved in usual condemnation actions. Other anticipated evidence questions were comparatively unique since they involved unusual aspects of valuation.

Mr. Powell principally handled the work with our expert witnesses and I principally handled work on the evidence questions. However, each of us as to his principal task conferred and checked with the other.

My time record shows that I worked on 61 separate days in preparation for the trial, in the period from August 14, 1946, to February 9, 1947, for a total of approximately 158 hours.—Mr. Powell and I were in frequent telephone conference during that period; and we conferred at Kennewick on August 24 and 25 for a total of 5 hours; for a total of 4 hours in Yakima and Kennewick on December 13, 1946, and for a total of 5 hours in Yakima and

Petitioner's Exhibit 17—(Continued)

Kennewick on January 20 and 21, 1947; for a total of 22 hours in Spokane on January 25, 26 and 27, 1947, during which time Mr. Powell and I, in addition to conferences between the two of us, conferred with expert witnesses Tinling and Dibble.

Included in the work I did in the above period was preparation of a trial brief which was submitted to the Court just prior to commencement of the trial. This trial brief was directed particularly to supporting our request that there be a special interrogatory put to the jury inquiring as to the value of the district's irrigation distribution works, the so-called irrigation properties. As regards those properties, the Court had indicated on June 1, 1946, that the Court would follow the so-called Schwellenbach formula and, as a matter of law, would not allow any condemnation award for said properties.

The trial commenced on February 10, 1947, and the case went to the jury and the jury returned its verdict on February 20, 1947. During the trial Mr. Powell handled interrogation of witnesses and summation to the jury, with myself assisting him at the counsel table; and I principally handled argument of evidence questions and questions of law, with assistance from Mr. Powell. However, we thoroughly collaborated with each other on all work during the trial. During the course of trial, considerable time was spent outside of court sessions in further interviewing witnesses, preparing additional, illustrative exhibits, and in drafting instruc-

Petitioner's Exhibit 17—(Continued)

tions to the jury. My time record shows 122 hours of work on the trial between February 10 and February 20, both inclusive.

Between February 21, 1947, and March 7, 1947, approximately 20 hours were spent in research and drafting the form of judgment on the verdict, in conference with Mr. Powell and in court in presenting the judgment. The controversial item in the form of judgment was that one which determined whether the \$170,500 which had been deposited in court by the Government and which had been used to pay off the outstanding bonds of the district should be credited against the jury verdict for the value of the so-called power properties or should be applied against the so-called irrigation properties, for which no award was allowed, but which the jury (in response to the special interrogatory) valued at \$365,845. On this matter, in addition to telephone conferences, 2 hours were spent in conference with Mr. Powell in Yakima on March 7, prior to the court hearing before the United States District Judge. The judgment was signed and entered that day.

From March 22, 1947, to and including June 6, 1947, about 6 hours were expended in research and drafting notice of cross appeal and arranging for filing notice of cross-appeal, in the event the Government filed notice of appeal, which the Government did on June 6.

Between June 9, 1947, and the end of 1947, I

Petitioner's Exhibit 17—(Continued)

spent approximately 70 hours (including 9 hours in conferences with Mr. Powell) on preliminary and incidental matters connected with the appeal and cross-appeal. Among such matters were: work on the designation of record, including a detailed check of the voluminous court file in Civil No. 128-99 and in other docket numbers in Civil No. 128, for the purpose of determining what records should be designated, in the interest of Prid; the designation of points to be relied upon by cross-appellant; and stipulations with the Government regarding costs of printing the record on appeal and briefs on appeal. My time records show that on these matters I worked on 31 separate days in June, July, August and September of 1947. My time records show that I was not required to perform any work on the Priest Rapids condemnation case in October, November or December of 1947.

In January of 1948 I commenced my research and drafting work on our appellate brief. The printed transcript of record was forwarded by the clerk of the Court of Appeals on December 29, 1947; and pursuant to stipulation of counsel, the Government's brief was due February 7, the Priest Rapids' brief was due 30 days after the Government's brief was served and the Government had an additional 30 days for reply brief.

The Government's brief was received by me on February 7, 1948.

Between January 14 and February 6, 1948 I spent

Petitioner's Exhibit 17—(Continued)

about 24 hours in research and preliminary drafting of the PRID brief, doing this work on 7 separate days. —Upon receipt of the Government's brief on February 7, 1948, I commenced intensive work on our brief. In research, drafting and redrafting (including 10.25 hours conferences with Mr. Powell in Spokane on February 17 and 18) I worked 136 hours on 26 separate days between February 7, 1948 and March 4, 1948, both inclusive, when the district's brief was mailed to counsel and the court.

Between March 5, 1948 and July 16, 1948, 52.5 hours were spent in preparation for appellate argument, in which Mr. Powell and I both participated, and in the trip to San Francisco for the argument which was heard on July 13, 1948. Included in the preparation was analysis of the Government's reply brief which was received by me on April 8, 1948, and preparation of oral rebuttal against the Government's reply brief. In this work, in addition to telephone conferences and correspondence with Mr. Powell, Mr. Powell and I conferred for 8 hours on July 1 and July 2 in Spokane and spent 10.5 hours in final preparation in San Francisco on July 12, 1948.

After submission of the case to the Court of Appeals, I performed no further work in the Priest Rapids condemnation case until March 7, 1949 when the Clerk of the District Court received an order from the Clerk of the Court of Appeals re a certified transcript of instructions in one of the

Petitioner's Exhibit 17—(Continued)

first condemnation docket numbers, covering individual farm lands, in Civil No. 128—which certified transcript the Court of Appeals had requested. On this matter I checked court files and checked the reporter's transcript and conferred with Mr. Powell by telephone, spending 2.5 hours on that matter.

After receipt of the Appellate Court's opinion, which was filed June 21, 1949, I spent approximately 35 hours studying and analyzing the opinion, conferring with Mr. Powell, and with the officers of the district who concluded that we would not petition for a writ of certiorari unless the Government petitioned—the Court of Appeals having decided that judgment should have been entered against the Government in the amount of \$302,856, which with interest amounted to a total sum in excess of \$400,000. In this work I conferred for 2 hours with Mr. Powell in Kennewick on July 1, 1949; and he and I conferred with the district's officers for 5 hours in Yakima on July 6, 1949; and following that meeting Mr. Powell and I conferred together for an additional 2 hours. —On these matters work was performed on 19 separate days between June 23, 1949 and September 9, 1949, it being on the latter date when I was informally but definitely advised by Assistant Attorney General Vanech in Washington, D. C. that the Government was not going to petition for writ of certiorari.

In October and November of 1949 I spent approximately 40 hours in conferences, drafting and

Petitioner's Exhibit 17—(Continued)

in appearances in court re the modified judgment, modified in accordance with the Court of Appeals' disposition of the case, and in petitions for the payment of district expenses. (This time is exclusive of time spent on our petition for payment of attorneys fees and exclusive of time spent on further proceedings in the Benton County court.) —Included in this work was 10 hours of conferences with Mr. Powell on October 9 and 10 in Yakima; and 2 hours he and I spent in conference with Mr. Ramsey and in conference in the Court's chambers on October 10.

Also Mr. Powell and I spent 6 hours on November 19 in conference between ourselves and in conference with the district's officials in their board meeting. And on November 21 Mr. Powell and I spent 3 hours in conference with Mr. Ramsey and in appearance with Mr. Ramsey before the Court for presentation of the modified judgment, which was signed by the United States District Judge on November 21, 1949.

No attempt has been made in the above brief description of work done to indicate the number of telephone conferences had with Mr. Powell nor the number of letters between us. Suffice it to say, by telephone calls and by correspondence we have kept each other fully and promptly informed of all developments in the case and of the progress being made by us in our work on the case.

The statements in this affidavit of the time I spent

Petitioner's Exhibit 17—(Continued)
in conferences and in court with Mr. Powell show that we spent approximately 300 hours together in conferences and in court. I have not stated, nor have I attempted to estimate, the very considerable amount of time spent by Mr. Powell in other aspects of his work on the condemnation case in the period from October 1945 through November 1949, nor the time spent by Moulton & Powell, and particularly Mr. Powell, in work on the case from February 1943 through September 1945.

The novelty and difficulty of the questions involved in the condemnation action against the district are shown in the Transcript of Record on appeal and in the briefs filed in the District Court and in the Court of Appeals.

/s/ J. K. CHEADLE.

Subscribed and sworn before me this 30th day of December, 1949.

/s/ JANE A. THOMPSON,
Notary Public in and for the State of Washington,
residing at Spokane.

Mr. Powell: If the Court please, I think there's one question that should be presented to the Court for the Court's information, and this involves the interpretation [113] of the contingent fee contract rather than the question of whether the fee in the contract is proper. The resolution upon which

our petition is now based sets forth a specific fee that the Board has agreed we should receive, based upon the contract; we have computed and the figure in that resolution is based upon a computation of the fee in accordance with the schedule of percentages given in the contract and applying 6 per cent interest from the date allowed in the judgment, that is, from October 1, 1943. If the computation is made upon the total judgment with interest the amount is somewhat smaller, and I wanted to mention that to your Honor as part of our case, because I felt your Honor might want to know how we arrived at the figure. There is a different method of computing it, if the interest is added to the total figure, then the 5 per cent would apply on the last \$122,000.00, but as we have computed it, the interest is computed at 6 per cent on a fee of approximately \$60,000.00 from October 1, 1943.

The Court: Well, that would be a matter of construction of the contract.

Mr. Powell: That's correct.

The Court: In case the Court holds with the petitioners on the other matters involved here.

Mr. Powell: That's correct, because there are two [114] possible constructions, and the District has construed it the way indicated by the resolution. I think that's all; we rest, your Honor.

The Court: The Clerk has just called my attention to the fact that ruling was reserved as to the admission of petitioner's identifications 7 and 8, and if you'll look at them I think it would be well

for you to decide whether you wish to renew the offer at this time or withdraw them.

Mr. Powell: It appears to us, if your Honor please, that they would not be particularly material, and therefore I would like to ask your Honor to permit us to withdraw them.

The Court: They may be withdrawn.

(Whereupon, petitioner's Exhibits No. 7 and 8 for identification were withdrawn.)

C. W. HALVERSON

called as a witness on behalf of the petitioner United States, being first duly sworn, testified as follows:

Direct Examination

By Mr. Ramsey:

Q. Mr. Halverson, you are a practicing attorney with offices in Yakima, Washington?

A. Yes.

Q. How long have you been admitted to practice in the State of Washington? [115]

A. Since June, 1927.

Q. Have you practiced in any other state other than the State of Washington?

A. No, all my practice, outside of Federal Court practice—

Q. Well, I mean by that, you did not practice prior to 1927?

A. No, I started here, and I'm still here.

Q. Has a considerable portion of your practice been in the Federal Courts?

(Testimony of C. W. Halverson.)

A. Yes, I would say that—well, by a considerable portion I wouldn't put more than 50 per cent, but I've had considerable experience in Federal Court practice, and considerable cases.

Q. What offices have you held or do you now hold with the local, state or federal bar organizations and associations?

A. Well, I'm a member of the Yakima County Bar Association, Washington Bar Association, and the American Bar Association.

Q. You have heard the testimony introduced here as to the nature and character of the work done by Moulton & Powell and Mr. Cheadle in connection with the case entitled United States vs. Clements P. Alberts, particularly under declaration of taking 99, which had to do with the properties of the Priest Rapids Irrigation District?

A. Yes.

Q. Have you made any examination of the record in that case? [116] A. Yes.

Q. And what has been the nature and extent of that examination?

A. Well, I've looked over the transcript of the record, some 1200 pages, the briefs, and the opinion of the Circuit Court.

Q. The transcript of record, of course, contained all the pleadings and various things in connection with the case? A. Yes, it did.

Q. You heard the testimony as to the length of time that was consumed in the trial of the case?

A. Yes.

(Testimony of C. W. Halverson.)

Q. I hand you, Mr. Halverson, petitioner's Exhibits 1 and 9, and ask you to examine first petitioner's Exhibit 1—no, that's petitioner's Exhibit 9.

The Court: While I think of it, I haven't examined these documents that show the payment of the \$2,000.00 fee to Moulton & Powell. It runs in my mind that somewhere I saw there was some arrangement that a thousand of that was to be paid in warrants of the District. Was it paid in cash as shown by the exhibits that you have in evidence here?

Mr. Powell: No, it was paid by warrants, but I think it may have been that one of the warrants may have been drawn on a fund where there was cash. It was all [117] paid by warrants.

The Court: I got the impression somewhere that part of that was paid in warrants for which there wasn't funds immediately available. I just wanted to clear up that point in my mind.

Mr. Powell: Well, we've received it, your Honor. I don't know how, now, it was paid.

The Court: Well, that's the important thing.

Direct Examination

(Continued)

Q. I presume, Mr. Halverson, that in your practice, as in the practice of most attorneys, some considerable portion of your practice is on the basis of a contingent fee? A. Yes, it is.

Q. Now, if in this particular case the District claimed compensation to the extent of \$1,060,685.00,

(Testimony of C. W. Halverson.)

and in the light of the contract of October, 1943, would you or would you not say that the contract numbered petitioner's Exhibit 1 was a fair and a reasonable contract?

Mr. Powell: Your Honor please, may I object for the record, because I think counsel is asking him the question now as to whether the contingent fee contract is proper in the light of Exhibit 9, the fixed fee contract, which would call for a judicial interpretation or a legal interpretation of the two documents, which I think is up to the Court rather than the witness. [118]

Mr. Ramsey: If the Court please—

The Court: I think I might save time, I think the government is entitled to present evidence on its theory, and the Court will decide which theory to adopt afterward. Your objection will stand, of course, and I'll overrule it.

A. Would you read the question, please?

(Whereupon, the reporter read the pending question.)

A. Well, as I understand the question, are you asking me whether this contract of October, 1943, would be a fair and reasonable contract on a quantum meruit basis for services, or are you asking me whether I would think this contract was fair and reasonable?

Q. No, I don't think you understand the question, Mr. Halverson. Bearing in mind this contract,

(Testimony of C. W. Halverson.)

being petitioner's Exhibit 9, or the October contract, which provides for payment of a fee of \$2,000.00 which the testimony shows has been paid, and advance costs of \$750.00 which the testimony shows has been paid, and bearing in mind that the contract of 1946, which is petitioner's Exhibit 1, covers a claim by the District of \$1,060,685.00, would you say that this contract, being petitioner's Exhibit 1, was a fair and reasonable contract?

A. No, I would not say that.

Q. Would you say that the contract was excessive? [119] A. I would.

Mr. Powell: I don't think I got that last question.

The Court: He was asked if he would say it was excessive, and he said yes.

Q. (By Mr. Ramsey): Now, Mr. Halverson, I'll ask you first, on the basis of quantum meruit, what would you say was a reasonable fee, contingent fee, to be allowed in this proceeding?

Mr. Powell: Now, if your Honor please, I don't think counsel can ask him two questions in one; if it's a contingent fee then it would not be on the basis of quantum meruit, as I understand it.

The Court: As I understand the question Mr. Ramsey is now asking the witness to disregard the contract and say what a reasonable fee would be.

Mr. Ramsey: I think counsel's objection is well taken.

Q. (By Mr. Ramsey): In your opinion, based

(Testimony of C. W. Halverson.)

upon quantum meruit, what would you say would be a reasonable fee to be allowed petitioners in this proceeding?

Mr. Powell: Object as immaterial.

Mr. Ramsey: In the argument of this case predicated upon law which I think squarely applies in this case, it will be the position of the government that at the very best, the petitioners here can only expect to be compensated on the basis of reasonable attorney fees. [120]

The Court: I'm not sure that I recall that in reading your brief, but if that is one of your theories which you intend to urge, I think you should be permitted to interrogate along that line. That doesn't mean that I'm adopting the theory, but I'm merely permitting the proof to be offered to support the theory. Will you read the question, please?

(Whereupon, the reporter read the pending question.)

A. By that you mean, Mr. Ramsey, not only the proceedings in the trial court, but through the appellate court?

Q. Yes, the appeal too.

A. I would say \$25,000.00, in my opinion.

Q. Now, bearing in mind that this is a contingent fee, contingent upon the petitioners making a recovery in the case, but aside from any contract which may have been entered into between the

(Testimony of C. W. Halverson.)

petitioners and the Priest Rapids Irrigation District, what would you say would be a reasonable fee?

A. Well, as I would consider it, based upon a contingent fee basis, it would be my thought that a reasonable contingent fee contract in my understanding under the canons of professional ethics that any contingent fee contract is subject to reasonableness and subject to the approval of the court as to reasonableness, I would feel that as to the first, say, \$30,000.00 of recovery, a third of that amount; [121] I would say as to the next \$20,000.00, I would say 25 per cent, and to the balance over that I would say 5 per cent. In other words, my way of figuring it would be much less than putting the breaking point at \$100,000.00 on the thing. I would break it before that point, considerably, and would think that the basis that I've outlined would have been a fair basis on which an attorney could have handled that.

Mr. Ramsey: You may cross-examine.

The Court: Have you figured out what that would amount to in dollars and cents in this particular case?

A. Well, I don't know the exact amount; it runs in my mind that over and above the \$170,000.00 which was admitted in the case, the recovery was around some, I believe four hundred or four hundred twenty thousand dollars in addition.

Mr. Ramsey: With interest.

(Testimony of C. W. Halverson.)

The Court: With interest, yes.

A. And I didn't compute it out.

The Court: Well, that's all right, that isn't necessary; I wasn't just sure that I got the basis that you stated; you said 25 per cent up to \$30,000.00?

A. No, I said a third of the first \$30,000.00, then I would say the next break would be up to \$50,000.00, from \$30,000.00 to \$50,000.00 I would say 25 per cent, then I would say 5 per [122] cent over that amount.

The Court: I see. All right, you may cross-examine.

Cross-Examination

By Mr. Powell:

Q. The computation gives you a contingent fee of only about \$32,500.00, doesn't it, Mr. Halverson?

A. I think around there.

Q. Don't you think the ordinary contingent fee contract would entitle an attorney to more money than a fixed fee contract? A. Yes, certainly.

Q. Did you take into consideration any contingency when you talked about a \$25,000 quantum meruit compensation? A. No.

Q. That would be in the event of a solvent client capable of paying, you would consider the work done might be compensated for fairly on a basis of \$25,000? A. Yes.

(Testimony of C. W. Halverson.)

Q. Assuming the client was solvent and able to pay.

A. Well, I assume that's the case here, if you were successful in your litigation it should be about as solvent as you could find.

Q. Well, of course that's contingent.

A. Well, your right of recovery is contingent.

Q. Well, your right of recovery of any fee is contingent of [123] necessity when your client hasn't any money?

A. Well, I'm talking about your right of recovery; on a contingent fee basis as I understand it your client never pays you except out of the amount you may recover in the litigation.

Q. That's correct.

A. My concern on a contingent fee basis is always concerned with the solvency of the defendant, not of the plaintiff.

Q. Well, of course in arriving at a fee of \$25,000 you would fix that as reasonable compensation for the work performed in this particular case assuming that the client was able to pay a fixed fee rather than making it entirely contingent?

A. That's right.

Q. Now, aren't there instances where it is impossible to make a fixed fee contract of that kind, for example, where your client is unable to pay, win, lose or draw. A. Oh, yes.

Q. In that event isn't of necessity your contract or your fee contingent upon the recovery?

(Testimony of C. W. Halverson.)

A. Yes, necessarily so. It would be based upon, if you have an insolvent plaintiff to proceed with, or one that cannot pay you, necessarily your chance of payment of fee is based upon your recovery. I think also that even though you have a solvent client that to a large extent your [124] quantum meruit fee is based upon your recovery in the case.

Q. Well, all fees of necessity are somewhat based upon the success of the litigation, aren't they?

A. Yes.

Q. That is, every attorney feels that his fee will be somewhat based upon his success?

A. Yes.

Q. Don't you think a spread of \$7,000 in a case this size is rather small?

A. Well, there's one thing that I might add in the contingent fee basis that I outlined, and that would be for the trial of the case in the trial court. Now, as to an appeal, in that case I would say that would have to be—I wouldn't figure a contingent fee on appeal in this case at all; I would say that that would be one that would be more or less negotiated on a reasonable basis. I wouldn't figure that in a case of this type or even in most contingent fee cases where you have been successful in the trial court and you have any substantial amount of money involved, that you would be necessarily entitled to charge a contingent fee basis on appeal unless that contingent fee basis was more or less

(Testimony of C. W. Halverson.)

on a line with a quantum meruit figure on it. That's my reasoning on it, anyway.

Q. Does the Yakima Bar Association have a regular schedule of [125] fees adopted by it.

A. Yes.

Q. Does it include contingent fee contracts?

A. I think it starts with an amount of \$100.00, as I recall, and I think that's all that it refers to, is to contingent fee cases.

Q. In personal injury litigation isn't it customary for lawyers in Yakima to charge 33 $\frac{1}{3}$ per cent of the amount of their recovery right straight through, regardless of amount?

A. Well, that's pretty hard for me to answer because I don't know, those are matters which usually aren't discussed too much; I could only answer in my own case, and I'd say no, it isn't in my own case. When I am fixing a fee I have a schedule of settlement before complaint is filed, settlement after complaint is filed, or after judgment is obtained, and I don't think that—of course, then again you've got amount involved. If it's a matter of \$250.00 that's one thing; if it's a matter of \$25,000 that's another. I don't mean to indicate that I'm going to take a small claim of \$250.00 and handle it on a contingent fee basis for 20 per cent if settlement is made.

Q. The schedule you referred to is 20 per cent in the event of settlement before suit?

A. Well, now, I don't think that those—those figures I'm [126] giving you now are my figures.

(Testimony of C. W. Halverson.)

Q. You don't know whether they correspond to the general practice in Yakima?

A. I can't say whether they do or not, no. I don't know.

Q. But in your opinion the figures you're about to give us would be fair figures in a personal injury action, is that correct?

A. Well, those that I have just given you, yes, your ordinary personal injury case, which would probably run, oh, three, four, five thousand dollars.

Q. What would those percentages be? I don't think you've given them.

A. Well, usually 20 per cent if a settlement is made before suit is started; 25 per cent after suit is started, and $33\frac{1}{3}$ per cent after trial.

Mr. Powell: That's all.

Redirect Examination

By Mr. Ramsey:

Q. Your schedule of percentages there would vary considerably in relation to the size of the claim, wouldn't it? A. Yes.

Q. Would you expect to charge the same percentage on a claim of one million dollars that you would on a claim of \$2,000 or \$5,000?

A. No, absolutely not, any more than you would expect a \$5,000 estate comparable to a million dollar estate, no. [127]

Mr. Ramsey: I think that's all.

(Whereupon, the witness was excused.)

ELWOOD HUTCHESON,
called as a witness on behalf of the petitioner
United States, being first duly sworn, testified as
follows:

Direct Examination

By Mr. Ramsey:

Q. Mr. Hutcheson, you are a member of the bar
of the State of Washington. A. Yes.

Q. And maintain offices in Yakima, Washington?

A. Yes.

Q. How long have you been engaged in the prac-
tice of law?

A. Since June, 1925.

Q. Is any considerable portion of your practice
in Federal Court? A. Yes.

Q. And roughly, what would you estimate the
percentage of your total practice—what per cent of
your total practice is Federal court practice?

A. Oh, that would be hard to say; undoubtedly
most of it is state court practice; possibly 10 per
cent; that's just a very rough guess.

Q. What memberships do you hold in bar asso-
ciations or organizations?

A. I'm a member of the Yakima County Bar
Association, Washington [128] State Bar Associa-
tion, and American Bar Association.

Q. What was the last?

A. And the American Bar Association.

Q. What offices, if any, have you held in those
associations?

A. I've been member of several committees at

(Testimony of Elwood Hutcheson.)

different times. At the present time I'm a member of the State Board of Bar Examiners of the State of Washington, and have been since March, 1946.

Q. Mr. Hutcheson, does a portion of your practice consist of contingent fee cases?

A. Yes, to some extent.

Q. You have heard the testimony with regard to the character and volume of work done by the petitioners in this case in connection with civil number 128, United States vs. Alberts, under declaration of taking 99, being the properties of the Priest Rapids Irrigation District? A. Yes.

Q. Have you examined the records in regard to the case?

A. Yes, I have read the briefs on appeal of both parties, the decisions of the various courts, and looked through the transcript of record, and I've also examined the two contracts, exhibits here.

Q. Now Mr. Hutcheson, bearing in mind the contract of October, 1943, being petitioner's Exhibit 9, and having [129] also in mind that the total compensation claimed by the District in this proceeding was in excess of one million dollars, would you or would you not say that the contract entered into in 1946 between the District and the petitioners, and being petitioner's Exhibit 1, is a fair and reasonable contract?

Mr. Powell: Now, if your Honor please, may we object again on the same ground, that it calls for a legal conclusion of the witness.

The Court: Overruled; you may answer.

(Testimony of Elwood Hutcheson.)

A. No, I would say that in my personal opinion that would not be a fair and reasonable contract.

Q. Is it your opinion that the contract is excessive?

A. Yes, in my opinion that is excessive.

Q. Mr. Hutcheson, based upon quantum meruit, what would you say would constitute a reasonable attorney fee to be paid to these petitioners for their services in connection with this case?

Mr. Powell: May I object again, your Honor?

The Court: Yes. Overruled.

A. My opinion would be \$25,000 would be on a quantum meruit basis reasonable compensation for their services.

Q. On a contingent fee basis, but aside from the contracts, in your opinion what would be a reasonable basis for compensation? [130]

A. Well, for a larger amount such as this, in my opinion the percentage rate should not be as much at it otherwise would be. In answer to that I would express my opinion that a fair arrangement on a contingent fee basis would be 20 per cent of the first \$100,000 in excess of the \$170,000 undisputed, plus 5 per cent of anything over and above \$100,000 in addition to the \$170,000.

Mr. Ramsey: You may cross-examine.

Cross-Examination

By Mr. Powell:

Q. Your quantum meruit figure of \$25,000, Mr. Hutcheson, implies a fee not paid on any contingency, is that right? A. That's right.

(Testimony of Elwood Hutcheson.)

Q. And a fee that would be paid by a solvent client? A. Yes.

Q. Now, your contingent fee schedule provides for approximately, on the recovery here, approximately \$35,000? A. I believe that's right.

Q. Isn't it customary, Mr. Hutcheson, to have a larger spread than that, or approximately a 30 per cent spread, between a contingent fee and fixed fee contract?

A. Frankly I don't know of any custom as to that particular point at all. Naturally on a contingent fee basis in the event of a victory the recovery would ordinarily be more than on a quantum meruit basis.

Q. And ordinarily it is recognized, is it not, in the practice [131] of la win Yakima and this vicinity, that a client may make a fair contingent fee contract in any manner he sees fit? That is, it isn't unusual, is it, to find clients making contracts for 50 per cent contingent fees?

A. That's sometimes done. Frankly it always seemed to me 50 per cent was too much, but I've heard of such instances. I don't think it's done very often for that large a percentage.

Q. And certainly not for a large amount of money, is it?

A. That's right, for a large amount of money that would be definitely excessive.

Q. You have heard Mr. Halverson's testimony as to his customary practice with reference to contingent fees in personal injury cases?

(Testimony of Elwood Hutcheson.)

A. Yes, if I understood him correctly that would be my usual experience, that is, 20 per cent if settled before commencement of suit, 25 per cent if settled after commencement but before trial, and after trial $33\frac{1}{3}$ per cent. That's the basis that I go on in personal injury suits, which of course never involve any large amounts such as this litigation.

Q. Then there would be no sliding scale in a case of that kind, would there?

A. According to the amounts?

Q. Yes. [132] A. No, there would not be.

Q. So if you had a contract like that on a personal injury case and received a recovery of about \$100,000 your recovery would be as much or more as it would on the million dollar recovery here, wouldn't it, or the \$400,000 recovery, I mean?

A. What would be the amount of recovery, you mean?

Q. In the event of recovery of \$100,000 in a personal injury case.

A. The fee then after trial would be \$33,333. I never heard of such a large recovery in a personal injury case.

Q. The court mentioned one in Los Angeles the other day.

A. I don't believe that ever happened in the state of Washington so far as I know.

Q. Are the contingent fee percentages you mentioned for the trial work, Mr. Hutcheson, that would be in the trial court?

(Testimony of Elwood Hutcheson.)

A. You refer to the personal injury cases?

Q. No, I'm referring to the contingent fee schedule or percentages you mentioned as being in your opinion fair in this case, 20 per cent for the first hundred thousand dollars and 5 per cent for all over that.

A. Well, that's on the assumption of going to trial and an appeal.

Q. And going through the appeal also? [133]

A. Yes. It would be my personal opinion that in litigation that important an appeal would be almost a certainty; that is the reason for saying that.

Q. And that would be assuming, of course, that the client would pay all of the expenses also?

A. Oh, yes.

Mr. Powell: That's all.

Redirect Examination

By Mr. Ramsey:

Q. Now, Mr. Hutcheson, speaking about this spread, if the District had recovered more than one million dollars that they sought in this proceeding there would have been a considerable spread between \$25,000 and the amount that would have been paid under the contingent fee that you mentioned?

A. Yes, very definitely so.

Mr. Ramsey: I think that's all.

(Whereupon the witness was excused.)

Mr. Ramsey: The government rests.

JOHN GAVIN

called as a witness on behalf of the petitioning attorneys, in rebuttal, being first duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. Your name is John Gavin? A. Yes, sir.

Q. And you are a resident and practicing lawyer in Yakima, [134] Washington?

A. That's right.

Q. Do you hold memberships in the local bar association?

A. Yakima County Bar Association, Washington State Bar Association, and American Bar Association.

Q. You are now a member of the Board of Governors of the State of Washington Bar Association? A. That's right.

Q. Mr. Gavin, you have been president of the local bar association? A. Yes, sir.

Q. And state if you will, please, the customary schedule of fees, contingent fees, in Yakima and vicinity as recognized by the Yakima County Bar Association?

A. The Yakima County Bar Association maintains a printed minimum fee schedule which was adopted by it and is now in effect. It is my recollection, I do not have it before me, but I think I can state that it calls for, on contingent fee arrangements for all recoveries in excess of \$100.00 after

(Testimony of John Gavin.)

litigation, after suit, one-third of the recovery. I believe it provides for either 20 or 25 per cent of the recovery in the event settlement is effected prior to trial. Amounts under \$100.00 are subject to other arrangements.

Q. Does that apply solely to personal [135] injury litigation?

A. That applies to all litigation; it is not confined to personal injury litigation. Of course, personal injury litigation constitutes the bulk of the contingent fee arrangements, but it's not confined to it.

Q. And is there any adjustment of the percentages on appeal?

A. I don't believe in the schedule; I believe it's customary for attorneys charging on a contingent basis to increase the one-third to 40 per cent in the event of appeal in contingent cases.

Q. You've heard the question asked Mr. Hutchinson and Mr. Halverson in reference to the two contracts, Exhibits 1 and 9. Are you familiar with the contracts?

A. I have read two contracts. I can't identify them by Exhibits 1 and 9, however. Petitioner's 1, then, is the contingent contract of August 30, and 9 is a contract of October 30, 1943. Yes, I have read these two instruments.

Q. Having in mind the fixed fee contract of October, 1943, would the contingent fee contract of August, 1946, in your opinion be a fair and reasonable contingent fee contract?

(Testimony of John Gavin.)

A. Taking the contingent fee contract, which is Exhibit 1, and examining it in the light of what information I have about this matter, it is my opinion that the percentages set forth in there are fair and reasonable.

Mr. Powell: That's all. Any questions?

Mr. Ramsey: No. [136]

(Whereupon, the witness was excused.)

Mr. Powell: That's all we have, your Honor.

The Court: Do you rest, then?

Mr. Powell: Yes.

The Court: Do you have anything further?

Mr. Ramsey: No.

The Court: I appreciate that this is a matter of considerable importance both to the petitioners and the government, and there are a number of vexing questions involved here, and I assume that counsel will wish to argue at some length, although you may assume that I have read your briefs and points and authorities here. Of course, the difficulty about that is that the principal issues as I see it are raised by the government's objection to this petition, and I assume probably that there was no time and opportunity for the petitioners to answer the government's brief, so that on those points that the government raises, some of them, I have so far heard only one side of the argument, naturally, because there was no reply or answering brief to those matters. I'm willing to allow counsel any-

thing within reason so far as argument is concerned. Do you think an hour on a side would be sufficient?

Mr. Ramsey: I would think so.

The Court: I'm not inclined to limit you; [137] I have nothing else today, and I'm not going to try to get back to Spokane now, but I thought it best to have some time limit there so we'll know what time we're going to get through. We'll recess, then, until 1:30, and each of you may have an hour on a side and divide it as you wish between opening and closing. I think perhaps the most orderly procedure would be to have Mr. Ramsey open and the petitioners answer, if there's no objection to that, because as I say, the thing that primarily concerns me are the objections raised by the government. In the absence of those objections I should be inclined to grant the petition, of course. Does anybody object to that arrangement? All right, we'll recess until 1:30.

(Noon recess.)

Mr. Ramsey: May it please the Court, in this proceeding it seems to me that the first question which should be considered is whether or not the compensation should be upon the basis of the contract entered into between the petitioners and the de facto directors of the District in the year of 1946. Now, there are a number of factors relating to the conditions under which this contract was entered into, the earlier relationship of the parties, and numerous other things that necessarily must be

considered in reaching a conclusion on that point in addition to the law which may apply.

Prior to 1943 for some seven years, as testified to by Mr. Powell, the firm of Moulton & Powell were the attorneys [138] for the Priest Rapids Irrigation District, handled all of their legal affairs, and were receiving a monthly sum by way of retainer. In 1943, on the 30th of October, according to the date upon the instrument, Moulton & Powell and the District entered into a contract relative to attorney fees to be paid to the firm of Moulton & Powell for representing the District in this condemnation proceeding. In February of 1943 the petition in condemnation had been filed and immediately thereafter an order of possession had been entered.

Following that, as has appeared from the statement of witnesses here, numerous conferences were held between the attorneys for the District, the attorneys for the government, and the Court, the attorneys for the District appearing also in many of those instances for individual clients. Before the date of this document, this first contract, all the parties knew that the government intended to file declarations of taking covering all the property in the District that hadn't been acquired by direct purchase, including the properties of the Irrigation District. They also knew exactly what the position of the government was in this case, and specifically the position of the government with regard to its contention that by acquiring all of the privately owned lands within the District it would, as the

ultimate beneficiary of the trust, be entitled to take the property of the District without payment of compensation other than might be necessary to retire the obligations [139] of the District, this of course being predicated upon the ultimate dissolution of the District, the position of the government that, being the owners of the land, under the rule *In Re Horse Heaven* that it took with the land all beneficial interest in the property to which the legal title was held by the District, and that there remained nothing more for the government to take from the District than the naked legal title not coupled with any beneficial interest, which was already held by the government.

Now, those things had been discussed and were thoroughly understood. On October 30, 1943, the District entered into this contract with the firm of Moulton & Powell. I assume that the contract was drawn by Moulton & Powell. They were the attorneys for the District, and apparently they had no other attorneys. Certainly it was signed by Moulton & Powell, by M. M. Moulton, and the Court will take judicial knowledge of the fact that the firm of Moulton & Powell was a very competent firm of attorneys; unquestionably they knew the content of the contract, they knew exactly what the contract provided. There was no fraud perpetrated upon them. It was a contract which, as I say, I assume they drew themselves because I can't reach any other logical conclusion; certainly they knew the contents of it, they signed it, and expected to be and were bound by it.

Now, this contract provided "District has pursuant to [140] resolution heretofore passed by the Board of Directors employed Moulton & Powell to represent the District in all matters in which the District may be interested or concerned in the proceedings brought by the United States for the condemnation of lands within the District, of which a large area is owned by the District" and I might say with reference to that, that that land other than the land which had to do with the power site and the pumping plants, the large area which reached nearly 10,000 acres was acquired by the government through stipulation; it was not involved at any time in this controversy; "and to represent the District in all matters in connection with said proceeding in which the District as a whole may be involved. As compensation for their services rendered in connection with said litigation, the sum of \$2000.00 is to be paid at this time. It is further understood by District that in the rendition of said services it has been necessary and will be necessary for attorneys to incur expenses on behalf of the District in a substantial amount and District now agrees to pay to attorneys \$750.00 at this time to be used by attorneys in the payment of expenses necessarily incurred in said litigation and not otherwise. Attorneys agree to render to District all legal services necessary in the protection of District's interest as a property owner in the District and as the owner of District instrumentalities being taken by the government and to employ such additional

counsel as will be necessary, at their own [141] expense. Attorneys further agree that they will use the aforesaid amount of \$750.00 for the payment of expenses heretofore incurred and to be incurred in handling the litigation referred to herein and not otherwise, and that they will account to District for all expenditures made by them on account of such expenses. Attorneys further agree that they will accept the aforesaid amount of \$2000.00 as full compensation for all services rendered by them as well as services to be rendered by them in connection with said litigation except that in the event that services not heretofore contemplated shall be required of attorneys, such additional compensation will be paid as the board of directors of District may deem proper and not otherwise."

Now, that contract is perfectly plain, readily understandable. On October 30, 1943, I want to reiterate that the attorneys and the District knew exactly what the situation was with reference to this condemnation proceeding and exactly what the position of the government was with regard to the District properties, and certainly knew that there was bound to be litigation on that point, since they were not at all in agreement with the position of the government, and I think we may safely assume that they also knew there would be an appeal, because the question was a large one; it involved on the one hand the claim of the District for more than a million dollars; on the other hand the claim of the government that they were not [142] obligated to

pay any additional sum over and above the sum paid for taking care of the obligations of the District, and with all of that knowledge in mind Moulton & Powell agreed under the contract to represent the District in all matters in which the District may be interested or concerned in the proceedings brought by the United States for the condemnation of land within the District of which a large area is owned by the District, and to represent the District in all matters in connection with said proceedings in which the property of the District as a whole may be involved, and there's no limitations; "Attorneys agree to render to District all legal services necessary in the protection of District's interest as a property owner in the District and as the owner of District instrumentalities being taken by the government and to employ such additional counsel as will be necessary, at their own expense."

Now, that's what Moulton & Powell agreed to do, and I hardly think it's necessary for me to argue with this court that Moulton & Powell knew perfectly well what their obligations were under that contract. "Attorneys further agree that they will accept the aforesaid amount of \$2000.00 as full compensation for all services rendered by them as well as services to be rendered by them in connection with said litigation except that in the event that services not heretofore contemplated shall be required of attorneys, such additional compensation will be paid as the board of directors of District may deem proper [143] and not otherwise."

In other words, so far as Moulton & Powell were concerned that payment of \$2000.00 was accepted in full as compensation for services rendered and to be rendered in connection with this matter. They left a loophole that if there were services to be rendered not within the contemplation of the parties, and I can only read from that services that you couldn't ordinarily foresee would grow out of this condemnation proceedings, then in such case additional compensation will be paid as the board of directors may deem proper, and not otherwise.

The Court: Of course, I wasn't in this litigation in its early stages, as you know, Mr. Ramsey, but I was just wondering if my impression is correct, that at the time this first contract was made and for some time after that, that it was the—I don't know whether it was the theory of the government people, but it was the theory of the land owners and their attorneys that they were to offer proof in the condemnation of the individual tracts or the privately owned tracts, they were to offer proof of the value of all of the assets of the District including what we call non-irrigation as well as irrigation assets, and have the court instruct that they were entitled to recover their pro rata share of that value. Now, if that theory had been adopted by Judge Schwellenbach and he had permitted that proof and so instructed the jury in each case, then there wouldn't have been any real controversy or [144] real lawsuit between the District and the government as to the acquisition of the assets.

Mr. Ramsey: As to the acquisition of the irrigation assets, if the court please.

The Court: No, I don't know whether I made myself clear or not; I thought at first the land owners endeavored to show the value of all of the assets of the District, power plant and everything else.

Mr. Ramsey: That's right.

The Court: And if Judge Schwellenbach had permitted that and instructed the jury each land owner was entitled to recover his pro rata share, then the landowners would have recovered that value piecemeal, and there wouldn't have been any controversy between the District and the government, in that case.

Mr. Ramsey: Well, that presents a novel question to me; I don't know whether that would have precluded the District from taking the position they were to be paid for their non-irrigation assets, or not.

The Court: I don't know on what basis they could, logical basis, if it had already been covered in in the distribution to the land owners; but I don't want to get you off of your train of thought.

Mr. Ramsey: Well, I'm very glad to have that called to my attention. Now, I don't remember the exact date that this matter was first taken up before Judge Schwellenbach, nor the [145] exact date on which Judge Schwellenbach indicated that it was his intention not to allow that to be shown in the trial of the individual cases, but to permit all parties to

make a record in the first cases tried so that the matter could be immediately taken to the Circuit Court of Appeals and determined as to whether those individual land owners had a right to make that showing. However, I find from the attached list of expenses on the—I hardly know what you'd call that instrument, itemized statement, I suppose, on the petition for expenses, that included is a list of expenses in trial of condemnations in October. Now, all of these that are dated appear to be in 1943; I don't know the date of those first cases, do you, Mr. Powell?

Mr. Powell: October, 1943.

Mr. Ramsey: They were tried?

Mr. Powell: Yes.

The Court: That's the expense account that's in evidence here?

Mr. Ramsey: Well, it will be up before the Court a little later on allowance of expenses.

The Clerk: It's attached to the petition for payment of expenses.

The Court: Oh, yes, I remember it now. Go ahead.

Mr. Ramsey: Sometime during the month of October these so-called first test cases were tried. At that time the [146] District and the firm of Moulton & Powell had full knowledge of the position that Judge Schwellenbach was taking in this case; they had full knowledge of the position the government was taking in this case; they had asserted in full the position that the District was going to take in this case, and all of that was known to the con-

tracting parties on the 30th day of October when they entered into this contract, so if it's a question of these various questions which arose in that matter not being known to the contracting parties, they were thoroughly known at the time that they entered into the contract. They knew that these issues were involved.

Now, let me say this: I think that the District certainly made a very good contract with Moulton & Powell in this matter in 1943. If the services of such attorneys could be secured for the work that was very plainly impending for the sum of \$2000.00, then the District made a very good contract and is to be congratulated. Nevertheless, they made it, and Moulton & Powell agreed to it, and Moulton & Powell signed the contract. There is a loophole, "except that in the event that services not heretofore contemplated." I don't know what they could have been; every issue involved here had been fully set out and developed at the time this contract was made and entered into, but "in the event that services not heretofore contemplated shall be required of attorneys, such additional compensation will be paid as the board of directors of District may [147] deem proper and not otherwise." If the board of directors had chosen to stand upon this contract, and told Moulton & Powell "You're not entitled to any further compensation here" frankly I don't know how in the world Moulton & Powell could have expected to collect another dime, in the face of this contract.

However, in 1946 the government was the owner of all the land in the District. It was very apparent that any sums that might be spent by the District wasn't going to be paid by the original land owners through assessments upon the land. They perhaps felt more generous at that time. At least, they felt generous enough so that in the face of that contract they entered into this contract agreeing to pay a contingent attorney fee which actually in this case runs to nearly \$79,000, and could have, if the District had prevailed in their claim for the full amount, have run to more than \$150,000, which most anyone will agree is a pretty fair additional compensation for additional work done under a contract providing for the payment of \$2,000 in all.

I submit to the Court that this contract was a most improvident contract to be entered into by the de facto board of directors of the Priest Rapids Irrigation District. The Priest Rapids Irrigation District had ceased to function as a district back in 1943. The de facto directors of that District were functioning purely in the position of trustees for the ultimate beneficiaries of the trust. Under those [148] circumstances, certainly under the law, they were required to forget their generosity and concentrate upon the preservation of the trust in their hands.

In August, or prior to the first day of August, 1946, in the case of C. I. Wright et ux and et al vs. Harley E. Chapman, being case No. 8035 in the Superior Court of the State of Washington for the county of Benton, the de facto board of directors

in that case prayed the Superior Court of the State of Washington for the county of Benton to take jurisdiction of the trust of which, under the laws of the state of Washington, the Priest Rapids Irrigation District is a trustee; "decree that this court retain jurisdiction of this matter for further appropriate supervision of the administration of said trust, and for further appropriate proceedings directed toward the dissolution of the Priest Rapids Irrigation District and the distribution of the corpus of the trust." On August 1 of 1946 Judge Paul entered a decree in this case decreeing that this court retains jurisdiction of this cause for appropriate supervision of the administration of said irrigation district and for further appropriate proceedings directed toward the dissolution of said district and distribution of the assets of said district.

Now, without conceding, because the government doesn't concede that Judge Paul could have taken jurisdiction of further proceedings looking toward the dissolution of the district in a [149] case to which the government was not a party and at a time many, well, at least three or four years prior to the time that that dissolution proceeding was brought under the statutory law of the state of Washington, nor does the government concede that he could bar anyone else other than the *de facto* board of directors of the District from initiating proceedings for the dissolution of the District, nevertheless the *de facto* directors of this District did go into that court, did ask that court to assume supervisory

powers over the administration of the affairs of the Priest Rapids Irrigation District, and the court by its decree did decree that he was taking supervisory powers over the administration of the affairs of the Priest Rapids Irrigation District. Now, bear that in mind. I hold in my hand the canons of professional ethics, canons of judicial ethics, adopted by the American Bar Association, and I note on the face of that, Washington Bar Association; the code of ethics of the American Bar Association shall be the standard of ethics for members of the bars of this state, citation Laws of Washington 1921, chapter 126, section 15, R. R. S. of Washington Section 139-15, Washington State Bar Association, Executive Office, 501 Third Avenue, Seattle, Washington. Page 9: "Contingent fees; a contract for a contingent fee where sanction by law should be reasonable under all the circumstances of the case including the risk and uncertainty of the compensation, but should always be subject [150] to the supervision of a court as to its reasonableness." That's Section 13, page 9.

In addition to that provision of the canons of professional ethics adopted by the state of Washington by statutory enactment, the *de facto* directors of the District in this case had gone into a Superior Court of this state and asked that Superior Court to take over supervision of the further administration of the affairs of the Priest Rapids Irrigation District, and the court had attempted to do that very thing, but they didn't take this contract into the court to be approved; they didn't submit it to the

very court that they had prayed to take supervision of the further administration of the affairs of the District and submit it to that court for determination as to its reasonableness, before the services were rendered, neither did they come into this court and submit that contract for approval by this court prior to the time the services were rendered. No one knew anything about that contract, so far as I know, prior to the time that the determination of the Circuit Court of Appeals came down in this case, except the contracting parties themselves.

Now, in all of the circumstances, in view of the fact that these *de facto* directors of the District were actually acting as trustees of a trust fund, in view of the fact that the canon of ethics adopted by this state says that these contingent fee contracts should be—let me use the exact words, I don't want [151] to misquote it—“subject to the supervision of a court as to its reasonableness;” in view of the fact that they had already gone into the state court of the state of Washington and asked for supervision of the further administration of the affairs of the District, by what conceivable process of reasoning could they have felt that the obligating of the District for what might amount to \$150,000, which actually does amount to nearly \$79,000, was a matter of such small moment that it didn't need to be passed upon by anyone as to its reasonableness?

I submit to the Court that this contract of 1946 should not for one moment be considered as a basis

for compensation to be paid to the attorneys in this case. It's a most improvident contract. It's one that the board of directors couldn't possibly justify in the light of the earlier contract. It almost amounts to a gratuity or a gift from the board of directors to the attorneys. They deliberately withheld that contract from the court that they had asked to supervise the further administration of the matters of the District, although it involved a bigger amount of money than they had probably ever had to deal with before in the whose history of the District, in one transaction. They withheld it from that court, they didn't ask his approval; they didn't ask his opinion; they didn't ask him to fix a reasonable amount to be allowed; no, they withheld this contract and held it in the files; they didn't come before this court and submit that [152] contract as to whether it was a reasonable contract or not. The whole conduct of the de facto board of directors in this matter is certainly open to suspicion and censure.

Futher than that, I submit to the court that as a matter of law compensation to these attorneys cannot be based upon the contract with the de facto directors of the Priest Rapids Irrigation District. It's a well established rule of law that wherever a trust fund is brought into court through the activities of a party litigant where others than the parties litigant benefit thereby, that the compensation in such a case cannot be predicted upon a contractual relationship between the attorneys and the litigant who appears for himself and others, or appears for

the benefit of himself or/and others, or appears for the benefit of others, that for the reason that the attorney fee would be impressed as a lien upon the trust fund brought into court, and the other parties benefiting were not a party to the contract between the litigating party and the attorneys. Now, on that matter I don't think there can be any real question that this is a trust fund, and that the recovery by the District as a litigating party was for the ultimate benefit of the beneficiaries of the trust. I quote from the opinion of the Circuit Court of Appeals of the Ninth Circuit in this very case. On page 12 and 13 of that opinion appears the following:

“Judge Schwellenbach faced the fact that in the instant case [153] the claimant (the District) appeared in the status of a statutory trustee for these former District land owners, and as such trustee was asserting its right under law to recover for beneficiaries of the trust a second compensation for property considered in the previous trials, i.e., the value of District facilities as irrigation facilities, which was in turn reflected in the value of the land. The fact that this particular claim for compensation for these irrigation facilities was asserted by a trustee in its representative capacity rather than by the ultimate beneficiaries of the trust, did not disguise the fundamental fact that it was in reality a demand for compensation for an element of property value for which just compensation had already been paid. We think that the Court looked through the form to get at the substance of the claim, and

that it did not err in regarding it as an effort to secure double compensation."

"Judge Driver was also aware that upon completion of the pending District disorganization proceedings in the State court, the proceeds of such a recovery, if authorized here, could not be retained by the District (it would pass out of existence) but would be delivered over to those entitled under State law to receive them. This situation led the Government to assert that in any event its present ownership of all of the lands in the District made it, [154] in effect, the real beneficiary of the trust. It may be assumed that Judge Schwellenbach so regarded this particular aspect of the case, and we think that he reached a rational conclusion."

The Circuit Court of Appeals, Judge Schwellenbach, and I think your Honor all recognized the fact that the Priest Rapids Irrigation District ceased to function as a district in 1943, and that it retained its legal status solely as trustee for the ultimate benefit of the beneficiaries at such time as it should be dissolved and its assets distributed. It follows that when the Priest Rapids Irrigation District as a party litigant brought this fund into court, that it brought in a trust fund not for its own benefit, but for the ultimate benefit of the beneficiaries of the trust as determined upon the dissolution of the District.

Now, it might very well be that this would be a good time for the government to reiterate its position that in the distribution of those assets, it is the

beneficiary. That was recognized by the Circuit Court of Appeals in this opinion, quoting from page 17 of that opinion:

“It is certainly clear that as to those land owners, including the District, who sold their lands outright to the government without condemnation proceedings, there could be no legal grounds of their complaining as to the price they obtained. It is only as to those individuals [155] whose land was condemned that any rational grievance can exist, and as to them, their cases are *res judicata* and not again to be inquired into collaterally in a state court dissolution proceeding or any other kind of state court proceeding.”

Judge Denman in his dissenting opinion wrapped it up in a little more terse language, and a little more direct:

“This Court holds that the District corporation is entitled to an award of some \$473,356.00 for its properties condemned to the government. It holds that the District may never be paid these monies, but they shall be paid into court to be held in the District Court for distribution after the conclusion of a state court proceeding for dissolution of the corporation holding such a judgment. Then, if the government still owns all the land, it will be repaid its deposit.”

The Court: Well, I must assume that the Court of Appeals was trying to say that as it appeared under the holding of the Horse Heaven case, that the government would recover the money, but in

the final analysis the Superior Court of the State of Washington can qualify or distinguish the Horse Heaven case.

Mr. Ramsey: That's right.

The Court: That's the reason I felt the money should be held here, and the state court determine who the money belongs to. If they held the government was entitled to this money, I [156] don't see why they didn't reverse me and direct that it be turned over to the government. It would be an idle gesture to say that it shall be held here, if it's a fore-gone conclusion that the government is going to get it back anyway.

Mr. Ramsey: I recognize that this is nothing more than the application by the Circuit Court of Appeals of the *In Re Horse Heaven* case, and for that reason I don't see any reason to burden the court with further citation from the *Horse Heaven* case; Heaven knows it's been cited enough before, but whatever the state court may hold, the fact remains that someone is the ultimate beneficiary, and it will be distributed to others than the party litigant, the District. Of course, if I can convince this court that the government is the ultimate beneficiary, then there is a second rule of law that's very well recognized, that a trustee may not exercise powers granted in a way that is detrimental to the trust. However, I realize this court is not going to attempt to pass upon a question which can only be determined in the distribution of the assets under the dissolution of the District.

Now, the general rule is that in trust funds such as this which are brought into court by one of a class or by one party litigant where the benefits of the trust must go to others or to him and others, then the general rule of law is as I have said, that attorney fees are predicated not on the contract made by the party litigant made with the attorneys, but upon what the [157] court holds to be reasonable attorney fees under all of the circumstances, and I have cited in my memorandum of authorities *Boothe v. Summit Coal Mining Company*; and those fees cannot be on a contingent basis, but are paid on a theory of benefit to the stockholders at large or a particular class generally; *Hutchison Box Board & Paper Company v. Van Horn*, 299 Fed. 424. There are a number of other cases, but I don't think it's necessary to enlarge upon the rule that applies on these trust funds.

The Court: I think I get your point on that, Mr. Ramsey. It is that this is in the nature of a trust fund, and that whoever the state court may ultimately determine to be the beneficiary, it will be either the government or the former land owners at some particular stage of the proceeding here—

Mr. Ramsey: Or some portion of the landowners.

The Court: —or some portion of the land owners, none of whom are parties to this contract.

Mr. Ramsey: That's right. I have no disposition to attempt to argue to the Court what might constitute a reasonable attorney fee to be allowed in this case if the Court finds that there should be an at-

torney fee allowed in excess of the \$2000 paid under the first contract. I suppose if we'd call into this court a hundred lawyers without any conference between the hundred lawyers, and put them separately on the stand we would elicit a hundred separate and different opinions as to [158] what might constitute a reasonable attorney fee. I recognize the fact that attorneys are very prone to go to the aid of their brothers in the collection of attorney fees, and I find that to be quite right and proper. Difficulties enough are experienced in the collection of attorney fees, and I have no fault to find with any attorney being biased in favor of another attorney in an attempt to collect fees. The court has had the benefit, if it can be called a benefit, of various expert witnesses as to what would constitute a reasonable attorney fee in all of the circumstances here.

I do want to call the Court's attention to one thing, and that is that in allowing attorney fees it isn't necessary, of course, and I know that the Court realizes that, that any witnesses on that point should be called at all.

The Court: Yes, I know.

Mr. Ramsey: The Court, because of his peculiar position and his knowledge of the case and the work involved and the nature and character and amount of it, is probably in the best position of anyone to determine what constitutes a reasonable attorney fee under all the circumstances. If the witnesses are called the court is not bound by their testimony. Still the final conclusion must be his as to what constitutes a reasonable attorney fee, and any witnesses

who may be called are simply for the purpose of giving the court such assistance as their opinions may be to him, if any. There are innumerable [159] cases upon that particular point, but I think the court will recognize that rule of law without any citations. I will be glad to furnish the citations and the statements of the courts if the court desires.

“Questions concerning the amount of fees to be allowed are properly and peculiarly within the knowledge of the judge who has become acquainted with the litigation during the progress of the trial, and in the absence of any showing of an abuse of discretion, the allowance of fees made by him must be affirmed.” Central Trust Co. vs. United States Lighting and Heating Co., 223 Fed. 420.

“And in fixing that amount, the Court may proceed upon its own knowledge of the value of the solicitor’s services.”

That’s the holding in *Harrison vs. Peria*, 168 U.S. 311.

“The Court having personal knowledge of the facts of the case, of the conduct and services of the counsel, and the results achieved by them, may, acting upon this knowledge, properly fix the value of the solicitors services without further evidence or formal testimony as to the amount of services rendered, or their value.”

That’s the holding in *Colley vs. Walcott*, 187 Fed. 595.

I have cited a number of cases and the holdings of the court fixing attorney fees in cases of this sort. Roughly, checking through them, it seemed to me that the courts were applying basically on these larger amounts a 5 per cent rule in [160] allowing attorney fees. In the case of Brown vs. Pennsylvania Railroad Company, an allowance of \$200,000 attorney fees on a recovery bringing into court the sum of two million dollars was reduced to \$100,000, which is a straight 5 per cent.

In the case of McCartney vs. Guardian Trust Co. 280 Fed. 64, attorney fees of \$15,000 allowed upon the recovery and bringing into court of \$700,000 was increased to \$37,500. In the case of Edwards vs. Bay City Gas Company, 172 Fed. 971, an allowance of \$125,000 in attorney fees was approved whereas the result of litigation extending over a period of five years and involving the appointment of a receiver, two million dollars in assets were collected and brought into court. This court isn't bound, of course, by the findings of other courts as to what constitutes reasonable attorney fees.

I think I may properly say this: That while I feel that the court could take the position under this contract of October, 1943, that that is a valid and binding contract, and that all of the services rendered in this proceeding were covered by that contract, that no services were rendered other than those that were contemplated by the parties, and that any additional attorney fees came in the nature of a gratuity from the *de facto* board of directors of the

District, I shan't urge upon the court that he adopt that position. I certainly have a feeling that the laborer is worthy of his hire. I feel personally that if the court can find a basis for allowance of [161] further attorney fees here that he should do so.

I feel just as strongly that that allowance shouldn't be based upon the supplemental contract of 1946, however. I don't consider that that was a fair contract; I do consider that it was a most improvident contract; I do certainly feel that before that contract, or before these services were performed, that the least that these petitioners and the board of directors of the District could have done was to submit it to a court for approval, and particularly in view of the fact that they had already asked the Superior Court of this state to assume supervisory control of the further matters involved in the Priest Rapids Irrigation District, and that their failure to do so in the face of the plain statement appearing in the canon of ethics adopted by this state on this type of contract leaves them in a rather unenviable position in attempting to rely upon this contract which is first brought to the notice of the court and of the government after all of the services have been performed.

I repeat that I personally feel that the attorneys have not been adequately compensated by the payment of the original \$2000, and I personally feel that attorneys should be allowed a reasonable sum for their services in this proceeding. I don't feel that that allowance should be based upon the con-

tractual relationship between the petitioners and the de facto board of directors, but should be based upon what [162] constitutes reasonable compensation for the services rendered.

The Court: You may proceed.

Mr. Cheadle: The Court wishes me to proceed?

The Court: Yes; are you both going to argue?

Mr. Cheadle: Yes, I think our argument will take less than an hour, though, your Honor.

The Court: Well, I was going to say, suppose that one of you argues, and then we'll take a recess and proceed.

Mr. Cheadle: Very well. May it please the Court, I shall refer first and make rebuttal to Mr. Ramsey, government counsel's, argument. Counsel read I believe verbatim the October 30, 1943, contract, placing his emphasis on words none of which, to be sure, are underlined in the contract itself. I do call the court's attention to certain words in that contract. They are, we submit, very significant in view of documentary evidence and testimony in the record at this hearing. That document states that the District has employed Moulton & Powell pursuant to resolution theretofore passed. It has employed, referring back to the resolution of March 9, 1943, I assume, that being the exhibit number 3 in this hearing. This is not the contract of initial employment of those attorneys. Further, in that first paragraph of the agreement proper, it states "as compensation for their services rendered in connection with said litigation the sum of \$2000 is to be paid at this

time." As exhibit number 4 shows, the June [163] 10, 1943, minutes state the agreement of the parties, and that \$2000 is to be paid, and as other testimony shows, including the warrants in here, those payments were in fact made substantially before October 30, likewise as regards the \$750.00 payment to be made at this time.

Most significantly, what government counsel has referred to as a loophole, what I submit may properly be considered as a provision which both parties intended, it is stated as a qualification that the \$2000 is to be accepted as full compensation, except that in the event that services not heretofore contemplated shall be required of attorneys, such additional compensation will be paid as the board of directors of the District may deem appropriate, and not otherwise, and again I'll hark back to the statement "\$2000 is to be paid at this time." No indication that that was the full agreement of the parties all the way through. Furthermore, your Honor, in this hearing there is no evidence whatever before the court excepting evidence which is to the effect that the parties themselves at the time considered that that contract covered the services contemplated and stated in those June 10, 1943, minutes of the District Board, contemplated proceedings up to a condemnation; it was so stated in the words of the District. Obviously a lawyer did not draw those minutes of June 10, 1943.

Mr. Ramsey: Now, just let me understand counsel's position. Is he now arguing that the terms of the written contract [164] should be varied—

Mr. Cheadle: No.

Mr. Ramsey: ——by other evidence?

Mr. Cheadle: Mr. Ramsey, your Honor, has placed his own interpretation on what is meant by services not heretofore contemplated by the parties.

The Court: I don't know how much of your time you've used, Mr. Ramsey, but I'll give you an opportunity to answer this argument if you wish.

Mr. Cheadle: Certainly, your Honor, that contract contains nothing in its words, the words of the contract itself, which would explain services not heretofore contemplated, and certainly it would permit the introduction of parol evidence. Mr. Ramsey emphasizes very heavily the August 1 decree of the Benton County court, and makes a point that this contract was not submitted to that court for approval. That court on the petition of the District, I myself was attorney for the District in that proceeding, and for the other plaintiffs, provides that the plaintiffs B. Salvini and J. H. Evett are in fact *de facto* directors of the District, are—

The Court: Before you leave the other matter, I must confess that I've had considerable difficulty following the proof offered by the petitioners here as to what was within the contemplation of the parties, what the attorneys were to do when this first straight fee contract was entered into. I [165] thought that there was some testimony here that they had in mind services in connection with test cases that were brought to acquire lands of individual land owners down there, but the main condem-

nation case had been brought and was pending when this contract was entered into. The District certainly was included within the perimeter description.

Mr. Cheadle: That is correct.

The Court: And when a landowner, whether it's an irrigation district or an individual, has an action pending against him to acquire his property, and employs an attorney to represent him in that case, it seems to me that means to represent him, and I have a little difficulty figuring out what they did contemplate, taking into consideration the terms of the contract, which I think I must do.

Mr. Cheadle: I can only refer, your Honor, to the testimony, and if I may have, please, Mr. Clerk, the exhibit number 4. In Exhibit 4, which is the minutes of that June 10, 1943 meeting, it states that Moulton & Powell, attorneys for the District, wish to gather certain information for the completion of the brief to be presented to Judge Schwellenbach. This brief was to be presented to the Judge at the same time that the attorneys for the Army Engineers presented theirs. The brief it refers to, to be presented to Judge Schwellenbach, certainly did not speak, your Honor, of many briefs, or of appeals, and the next paragraph reads "A discussion of ways and [166] means of paying the attorney fees to Moulton & Powell was discussed, and it was decided that it would be agreeable to both the District and the attorneys to make a payment of \$1000 in cash and a payment of \$1000 in district warrants, the total amount of \$2000 being the amount required

by Moulton & Powell to prepare the legal requirements of the District up to the time of condemnation proceedings should such a step become necessary."

Mr. Powell did not recall the exact time, but it was in that summer of 1943 that there was a conference, in the nature of a pretrial conference; there was an agreement among court and counsel apparently as to the raising of this question in connection with those test cases, and I submit that Mr. Powell's testimony and Mr. Reierson's testimony are consistent, the testimony of each of them consistent with this exhibit number 4, and indicates that that initial contract, which after all refers to the precise payments, was for that first stage of the proceeding.

The Court: I know the old axiom that a shoemaker's child always has holes in his shoes, and a barber's son always needs a haircut; I must say that I think Moulton & Powell, if that's what they had in mind, could have drawn themselves a much better contract here, a much clearer one, I should say.

Mr. Cheadle: I am frank to say that I am puzzled, whether the contract bears the date of August 30, because it was dated [167] when the payments were to be paid, I do not know; the payments were made on vouchers issued in July, and another in September, but the warrants were actually paid in October, I believe about October 19.

We do not think there is any question, your Honor, but what under the decree of the Benton County Court it was appropriate for the District

directors to make this contract. It states that directors "until further notice or decree of this Court as hereinafter provided for" "shall continue to function as directors of said district and in particular shall do any and all things necessary to the defense by said district against the petitioner" in this condemnation case, and do everything else necessary to protect the interests of the District, directed them to do so as directors of the District, and the statute law shows clearly that they do have authority to make that contract.

Mr. Ramsey stated as a matter of law compensation just could not be based on a contingent fee contract by this municipal corporation. I submit that the Okanogan case, *State ex rel Hunt vs. Okanogan County*, cited in our list of authorities, 153 Wash. 399, shows otherwise. Mr. Ramsey read from the opinion of the appellate court—

The Court: I don't know whether I get your point there. Are you talking about Mr. Ramsey's trust fund theory here, that they are in effect bringing a trust fund into being here? [168]

Mr. Cheadle: Yes. I submit, your Honor, that Okanogan County and the commissioners of Okanogan County are fiduciary officers. Whatever funds they received they were holding in trust for the county; they were permitted to make a 50 per cent contract in that case.

The Court: Yes, I'm familiar with the Hunt case, but it seems to me there would be a difference where Okanogan County was a going concern, it was

a live and functioning municipality; Mr. Ramsey's point is here you have a defunct one, it's gone out of existence for all practical purposes, and its de facto directors are only trustees for the fund. I think if you can see such a thing as a county going out of business then you would have a comparable situation; but go ahead, I don't want to interrupt you too much.

Mr. Cheadle: Regarding Mr. Ramsey's references to the Court of Appeals opinion, I respectfully submit, and with due respect to Mr. Ramsey, that he gave a few selective readings. I'm rather hesitant to rebut likewise with a few selective readings, the selections being of course different than those read by Mr. Ramsey, but I do want to point out that the court did state on page 6 of its pamphlet opinion:

"Judge Driver assumed that the Schwellenbach formula meant that as to the assets of the District 'which were not used exclusively for irrigation'"

and those are the only ones for which award was allowed, [169]

" 'that they did not enter into the value of the land as determined by the jury, that the owner was entitled to his pro-rata share as to the value of those properties not used for irrigation.' "

Those are the properties for which award was allowed. It is that part of the Schwellenbach formula

which resulted in award, and it was affirmed by the Court of Appeals. The Court of Appeals was quoted that the owner was entitled to his pro-rata share as to the value of those properties not used for irrigation, and on page 9, in a footnote, the court notes that the question as to distribution of assets is of course to be left to the Benton County Court where, as the court stated, all rights of all parties were preserved. On page 12 the court states that as regards the factual aspect, and they were referring to procedure, they accepted "the appraisal of Judge Schwellenbach." On Page 14 they concluded that the record does not sustain the attack on the validity of the Schwellenbach formula.

In other words, as respects the attack on the Schwellenbach formula, the government's appeal was denied, the District's cross appeal was denied, and the court was found in error solely with regard to the application of the \$170,500, and on page 14 running to page 15 the court quotes at length from Judge Schwellenbach's memorandum opinion, noting that in this particular regard he was speaking exclusively of the [170] non-irrigation assets, not of the so-called irrigation assets.

Again on the bottom of page 15 and on page 16 the further notation is made of the award for the non-irrigation assets. It is stated "In his summation at the close of the case Judge Driver made plain that his judgment would provide compensation to the District for only that portion of its facilities not devoted to irrigation uses" and further the court states:

“We are in accord with the conclusion of the lower court that utilization of the Schellenbach formula was eminently fair under the unprecedeted circumstances of this case, and that applying it did not work a confiscation of private property or property rights of the District landowners. In this view of the case it logically follows that at the time of entry of judgment the Government had fully paid for and was the owner of all of the so-called irrigation assets of the District.”

The Court of Appeals definitely affirmed the ruling that compensation was due and had to be paid for the non-irrigation assets, and it quoted with approval that part of Judge Schwellenbach’s opinion in which he stated the landowners should have it. We are not seeking to have this court make that ruling. That is part of the argument, of course, which we will present to the Benton County court.

As regards government counsel’s statement of what the expert witnesses testified to, I do not question it, but I [171] wish to point out to the court that our witnesses were questioned merely to that question which is pertinent to our petition, is this a provision of reasonable contingent fee in this contract pursuant to which we seek payment. They did not go into the broad question of quantum meruit services as did the government’s witnesses.

We do not question the authority of cases cited in government counsel’s brief. I do wish to question their applicability, your Honor, to this case. Mr. Powell will make reference to some of them in his

argument. I regret, through probably government counsel's stenographer's error, the 223 Fed. 420 on the Central Trust seems to be a wrong volume of Federal. We did not read that case. The Harrison vs. Peria case, that was an action involving estates of deceased persons, the lower court determined a fee against the fund recovered, and there was an objection, and it was affirmed. The Colley vs. Walcott case, the quotation in the government's points and authorities is not a quotation from the opinion of the court itself; it may be from a headnote or a digest paragraph; at any rate, that case was an appeal from an allowance of an attorney fee which had been allowed against the fund, and the appellate court did affirm. One of the errors assigned, and that error assigned in connection with which the court did say something in substance like what is quoted here, error was assigned because there was no evidence [172] offered on which to base the order allowing the fee, and the court pointed out that the same court which allowed the fee had heard the case and was familiar with it, and so on. There was no point of the court fixing a fee with disregard to a contract. The issue was of the court fixing a fee where one had been allowed without apparently any introduction of evidence on the fee question.

There are very few cases, your Honor, I wish to add to those set forth in our points and authorities. I do wish to refer the court to Spellman vs. Bankers' Trust Co., 6 F. 2d 799, 800. It's in the Second Circuit, 1925. The court held the contract of retainer having been made in New York State, we,

the Federal court, hold that the rights of the parties should be determined under the contract law of New York. In *Shattuck vs. Pennsylvania Railroad Co.*, 48 F. 2d 346, that being a District Court decision in the Western District of New York, the Spellman case was cited and the court likewise there held that the contract having been made in New York State, in this Federal court proceeding the rights of the parties were to be determined by the New York contract law.

I emphasize that, your Honor, because we feel that the propriety of this contract, the authority of the District to enter into it, should be considered in view of the applicable law, statute law and case law, of the state of Washington. I add further, your Honor, two cases which we believe rebut the contention [173] of the government that the 1946 contract is not supported by any consideration; *Long vs. Pierce County*, 22 Wash. 330, at 344 and 348, also 61 Pac. 142, and *Stofferan vs. Depew*, 79 Wash. 170.

The Court: It would seem to me, Mr. Cheadle, I don't recall Mr. Ramsey having discussed that point, at least in his oral argument, but it would seem to me that it perhaps wouldn't be directly involved here, because if there is work that has been done not in contemplation of the parties when the first contract was executed, there would be consideration for the second one. If on the other hand nothing was done not in contemplation of the parties, then the question of consideration for the

second one would be moot, because you couldn't recover.

Mr. Cheadle: That is correct. There are also cases which hold no consideration is necessary in a contract which modifies another contract, but we submit the uncontradicted evidence shows there were proceedings not within the contemplation of the parties, that the contemplation of the parties was limited as to the services rendered, and that accordingly the second contract was fully supported by the consideration of those services which had not been contemplated initially, and we emphasize the fact that the evidence is not controverted which shows the evidence, which was what was in the contemplation of the parties. We submit that the October 30 contract read as a [174] whole permits the consideration of such evidence, both documentary and testimony.

I'm not going to repeat, your Honor, or go into the points and authorities which the Court has stated have been read. We do submit that the Hardman case and the Okanogan case in 153 Wash., the Albert vs. Munter in 136 Wash. clearly show that contingent fee contracts are appropriate, are appropriate when entered into by a municipal corporation. We submit also that the statute law and the decree of the court in Benton County authorized these *de facto* directors, who the Benton County court in its August 1 decree directed to proceed as directors of the irrigation district to do everything necessary in the defense of this condemnation case, and that they did proceed in accordance with the

statute law of this state regarding the powers and authority of irrigation district directors, which statutes are quoted in our points and authorities. We submit that the amount of the fee as our witnesses stated is more than reasonable as provided in that contingent fee contract. The contract has been performed, and we submit that we are entitled to payment in accordance with it. The District, the other party to the contract, is agreeable as its formal resolution here in evidence shows. We submit that the order prayed for in our petition should be granted.

The Court: The Court will take a ten minute recess. [175]

(Short recess.)

Mr. Powell: Your Honor please, I think I should ask whether your Honor wants to hear from me, because I testified and I don't know whether I'm permitted to argue.

The Court: Oh, yes, if it's necessary you have the court's permission to argue as fully as you care to do so.

Mr. Powell: Thank you. Well, I don't intend to touch on many of the matters that I've gone into before. I assume that the court is considering the entire record in the entire case in considering this matter, and the record in this case would all bear out or corroborate some of the testimony given as to the work performed. Also in connection with the one recital, much in issue here, signed in October, 1943, there is reference to employing other attorneys. I think your Honor will find that early in

1943 Mr. Cunningham joined with us in a brief concerning the filing of an early motion, and I think you'll find we paid him his attorney fee.

The Court: I've had a little difficulty with the time element here. I was first under the impression this October contract was made before the questions in which the District was interested had been decided in the test cases, but I think I was mistaken in that; as I understand it, the test cases were decided and your work was concluded before October 30, 1943.

Mr. Powell: That's correct; however, I can't account for the contract, because the contract was supposed to follow our [176] conference in June, and I think the dating of the contract was a matter of dating it when it was signed rather than when it should have been signed.

The Court: The thing that puzzles me is why there was a written contract for services already rendered and for which you had been paid.

Mr. Powell: I can't explain it, I didn't sign the contract, but at the same time that is the contract referred to in the June minutes when I was there, and the money involved is the money referred to in the three vouchers in evidence here. Now, counsel mentions the contract of October, 1943, and says that the contract of 1946 could not be entered into, and the Court in discussing the matter with Mr. Cheadle mentioned the fact this is not a going concern, and therefore they would be *de facto* directors and there might be a question whether they had the authority to make the contract. It seems to me if

that is the case the same thing would be true as to the 1943 contract, because their functions were curtailed in the taking over of the property by the government, because that would be the time at which they started to take the irrigation district properties away.

Now, counsel makes mention of the fact this is an improvident contract and he refers to the fact the irrigation district directors are going to give to the directors a substantial sum of money, which is \$79,000. I think probably at first blush [177] that may sound accurate, but at that time there wasn't any specific amount involved, there wasn't any definite assurance what the jury would do or what the witnesses would find, so when that contract was made it couldn't have been an improvident contract, because nobody knew what kind of a result would be obtained in the trial court before the jury or in the Circuit Court of Appeals. It seems to me on the basis of counsel's own argument it was a provident contract, because it limited the attorneys to a percentage of any recovery, and if they didn't recover anything they wouldn't get any fee. It seems to me it was in the nature of a very provident contract as far as the directors were concerned.

I think Mr. Cheadle mentioned it in his discussion, but we have felt this was entirely a matter of a contingent fee because of the fact there wasn't any fund at the time the services were performed or rendered upon which we could base a claim for services, and therefore by the very nature it would have to be a contingent arrangement. If the Court

is entertaining the view that the matter is to be decided upon the value of the services rendered then we feel we should like to have opportunity to present some additional testimony, because we did release some of our witnesses in that connection before that question had arisen.

I don't care to address the court any further; this is a matter very personal to Mr. Cheadle and me, and it's a little [178] difficult and embarrassing for me to present it because of the fact it involves matters pending almost seven years. I appreciate your patience and courtesy.

Mr. Ramsey: May it please the Court, there are only one or two matters I want to touch on very very briefly in rebuttal. Mr. Cheadle has submitted to the court the proposition that in the June 10 minutes of the meeting, that the work for which counsel had been employed and paid under this first contract was actually the preparation of a brief which was referred to at that time, and that the understanding was general that the payment made was to be only to the time of trial, for work done to the time of trial. Now, I want to point out to the Court that this contract is dated October 30, and I assume was executed on the date that appears on the face of it. Now, it recites certain things, and they're specific; there isn't any fooling around about it. If 'way back there in June all the parties understood that this payment of \$2,000 was to compensate only for the preparation of this brief, which had already been prepared and submitted, or for work to be done up to the time that the case went

to trial, then why didn't they say so in the contract? Why did they draw the contract that they did draw, and why did Moulton & Powell sign it? I can't believe that there was any such understanding between these parties. I certainly can't believe that a law firm as outstanding [179] as Moulton & Powell would bind themselves on a contract such as they did bind themselves under, the contract here, when their understanding was what some of the witnesses very haltingly suggested might have been their understanding in their testimony before this court.

Now, all of these matters, these minutes, these so-called "Well, we understood that this was to be for that or this or the other thing" occurred before the execution of this contract. I don't see any testimony before this court, I don't see any chance that the court can reach any logical conclusion other than that the parties on October 30, 1943, meant exactly what they said under that contract. I'm not going to touch upon the rules of law regarding the varying of the terms of a contract by parol evidence or anything of that sort. I'm perfectly willing for the court to take a broad view of the whole situation. All I ask is that he apply the rule of ordinary common sense to the situation as it exists, bearing in mind that the parties to that contract, other than the *de facto* board of directors, was a firm of attorneys, and an excellent firm of attorneys. They prepared the contract themselves and they signed the contract themselves, and they must have expected to be bound by the terms of the contract itself.

Now, if I have given the impression to the court as I apparently have to counsel that it's my position that the de facto board of directors of this District were without authority [180] to act for the District either by way of making a contract or anything of the sort, I want to disabuse the court of that idea. I am not arguing that point; I am not making any such claim. Of course the de facto board of directors had authority to act on behalf of the District. They are under rules which apply in trust law as to how they shall act. They're acting for the benefit of a trust fund, and subject to the law that applies to that, but under the statutes of this state it didn't take any decree of Judge Paul in the Superior Court of this state for Benton County to constitute them de facto directors of that District or to authorize them to act on behalf of that District. They had that statutory authority. However, they did go into the Superior Court. They asked that Judge Paul decree that they were de facto directors of that District, and he did so; I don't know that he hurt their position any by that decree; he certainly didn't help it. That was their position before they ever went into that court, and it was their position when they came out.

They asked that he supervise the administration of the trust, and that's their own language "of the trust" and he decreed that the Court was retaining jurisdiction and supervision of the administration of that trust. He did that on the petition of the de facto directors of the Priest Rapids Irrigation District. They went back into that court in 1947,

set up the necessity of obtaining money for the purpose of [181] carrying forward this case, trying it, appealing it, asked for authority to issue these certificates of indebtedness, but they didn't then or at any other time say anything to that court about attorney fees, and they didn't then or at any other time submit this contract, 1946 contract to the court to be approved. They went in just before they went to trial with this case and applied to that court for authority to issue certificates of indebtedness in order to secure funds with which to carry on the case, but there never was any submission of the matter of attorney fees or of any contract, or the court wasn't asked to determine what was reasonable attorney fees; the court wasn't asked to pass upon the reasonableness of this contract; in fact, the matter wasn't mentioned, although theoretically they were acting upon the theory that the court was supervising the administration of the affairs of the Priest Rapids Irrigation District. I submit to the court that these petitioners are entitled to a reasonable attorney fee, that these contracts should be completely disregarded, and this court should fix what constitutes reasonable compensation to these petitioners for their services on behalf of the District in this case.

(Whereupon, detailed list of expenses was admitted in evidence as petitioner's Exhibit No. 18.)

(Discussion between court and counsel of list of expenses.) [182]

The Court: Well, gentlemen, I'm not going to make any detailed statement here. I might say that for the reasons Mr. Ramsey has advanced here I have concluded that I shouldn't be bound by this contingent fee contract made in 1946. On the other hand I do not believe that these attorneys are bound by the first contract made October 30, 1943. It's inconceivable to me that attorneys—while I can't understand all of the details in connection with the matter, and some of them are very puzzling, I can't conceive of attorneys of the experience of Moulton & Powell and their knowledge of the matters involved here, to have undertaken to prosecute this litigation through for the sum of \$2,000, and the allowance of that amount would be grossly inadequate and would result in hardship, certainly, to these attorneys who have done the work in this litigation.

It seems to me that the conclusion is inescapable that at least at the time of the making of the 1946 contract the de facto directors were acting as trustees for the ultimate beneficiaries of the award paid for the District's property. It was apparent to everybody at that time that for all practical purposes the District was out of business, that it would not ever again function as an irrigation district, and the only duty that the directors had was to protect the fund and bring in such funds as they could and protect it for the benefit of the beneficiaries. Those beneficiaries we do not yet, I think know who they will be. It may very well be that the government will [183] be paid back under the In Re Horse

Heaven case, the doctrine in that case, that the money will be returned to the government. It may be that it will be paid to the land owners in the District at the time the government filed its petition here, or part of them, at any rate, or some of them, but whoever those beneficiaries may ultimately turn out to be, they were not parties to the contract that was made in 1946.

The District had no money with which to pay attorneys except from the funds that might be recovered, and it seems to me that we do, in practical effect here, have a situation where trustees by litigation bring in funds to be distributed to others than the party litigants, and while I think that this court should determine the compensation to be paid to the petitioners irrespective of the 1946 contract, and without being bound by it, nevertheless I think that I should properly take into consideration that the services were rendered on a contingent basis, and necessarily so, because if the litigation had been unsuccessful Moulton & Powell or these attorneys would not have recovered anything for their services, because there was no funds other than what they would bring in by the litigation to pay them, and in that connection I think perhaps some of the witnesses for the government here, the attorneys who appeared, I doubt if they took fully into consideration the contingencies involved in the matter of prosecuting this litigation. It was not only the usual contingency as to whether any [184] substantial amount would be recovered at all in the trial court, but also here there was a grave ques-

tion as to whether even if the attorneys made a substantial recovery they would be able to collect their fees from the fund.

That contingency is still before us here in a very definite way so that there was the contingency, as I say, of the amount of the recovery, and then whether even if they did make a recovery they could collect their fees from the fund. I need hardly say that the litigation is unusually difficult, involved questions that were not only novel, but perhaps unique, and that the case was very capably conducted and successfully prosecuted both in the trial court and the appellate court.

On the other hand, I am keenly aware of my responsibility here in that I do represent the beneficiaries of the trust, and in that I am dealing with trust funds, and bearing those various things into consideration it seems to me that \$50,000 is what I would consider appropriate compensation on a contingent basis for the work that has been done here, under the circumstances as they appear from the evidence and from the record. I might say that I regret that perhaps counsel didn't have an opportunity to present their witnesses here on the basis on which the government presented its evidence as to the reasonableness of the services, but I am assuming that your witnesses for the purpose of my decision would testify that the amount of your contract is a fair and reasonable fee on a [185] contingent basis, which is the basis that I am following, so you are not prejudiced by not having them testify.

If I had before me a contingent contract of this kind between a live and functioning municipal corporation and attorneys on some claim that the District had, I would not hesitate to say that this is a fair and reasonable contract. I think it is, but under the circumstances of this case, where the District had gone out of business, where the funds are being brought in as trust funds for the benefit of beneficiaries and the beneficiaries may very well be the government in this case, I think that the court should be somewhat conservative, perhaps, if I may put it that way, in the matter of the allowance of fees, and I think that even in these times of inflation \$50,000 is a good fee in a lawsuit.

Mr. Cheadle: May I make an inquiry of the Court? I assume the \$50,000 is the total amount of the fee in the condemnation case which your Honor thinks should be allowed?

The Court: Yes, that's my position.

Mr. Cheadle: With all due respect, in view of the legal determination made by your Honor and therefore the approach made to the fee question, I do respectfully submit that we have not had opportunity to interview witnesses or to present testimony as to what the reasonable value of these services would be upon the basis mentioned by your Honor. Our witnesses would testify, I am confident, in view of what they told us, and I [186] believe to an extent as shown by their testimony, that a fee of more than \$79,000 would be reasonable for the services rendered here considering the contingent situa-

tion. We have not had opportunity to present that testimony.

The Court: Well, I'm sorry that there was a misunderstanding, Mr. Cheadle, but as I recall I very plainly stated that I suggested that it be stipulated that your people would testify that this fee provided for in the contract was a reasonable fee, and then that they could be permitted to go on their way, but I said if Mr. Ramsey puts on testimony on some other basis, you will be permitted to bring them back in rebuttal if you care to do so, and you did put on Mr. Gavin, and I assumed you didn't care to put on the others. It was obvious from Mr. Ramsey's brief that he was contending very vigorously that the court should not be bound by your contingent fee contract, and should set a fee on the basis of what was reasonable.

Mr. Cheadle: That is correct, your Honor. We didn't know what the government's position was until yesterday, your Honor. I should say perhaps the day before. Mr. Shefelman flew in here, or rather came in by train, early in the morning. No response was filed to our petition. We petitioned for allowance of our fee per contract. I am not, your Honor, seeking to reargue at all the ruling that your Honor has made as regards the basis for approaching this fee question, but I do respectfully submit—— [187]

The Court: If you wish to wait until I come down to Yakima here again, this fund isn't bearing interest, there's no detriment to the government—do you have any objection, Mr. Ramsey?

Mr. Ramsey: None whatever.

The Court: If you wish to reopen it again when I come down here, I'm not going to stay over for it, and I'm not going to make a special trip, but the next time I'm here I'll permit you to put on evidence of experts as to what would be a fair and reasonable fee in the absence of contract. I want it distinctly understood, however, that I'm not obliged to go up from \$50,000, that I reserve the right to change my mind and go down. It will be entirely up in the air, if you want to reopen it; I may give you \$79,000, I may give you \$25,000 or \$15,000, whatever I think at that time.

Mr. Cheadle: May I have opportunity to consult with my associate and advise the court and counsel?

Mr. Ramsey: I assume the government will be permitted to go back into it too?

The Court: Oh, yes, of course.

Mr. Ramsey: I was shooting in the dark; I didn't know which theory your Honor wanted to pursue. Certainly I tried to make myself clear in my points and authorities; it's true probably, these gentlemen didn't get this until yesterday, although I mailed it down—[188]

Mr. Cheadle: Day before yesterday.

Mr. Ramsey: It was mailed out the same day I received the points and authorities of petitioners.

The Court: Well, I certainly have no desire to preclude either side from presenting all the evidence they think that they should present here, because it is an important matter, and I'll give you

that opportunity, but it will have to be the next time I'll be down here. I think February 23 is the next day here, and we'll set it and give you notice. However, if you decide you'd prefer to let the matter stand, you can let me know.

Mr. Cheadle: We will do that, your Honor.

Mr. Powell: May I ask your Honor if the statement your Honor made of \$50,000 would be with or without the \$2,000 credit? That wasn't mentioned by your Honor.

The Court: Well, as I said at the outset, I didn't propose to go into all the points or arguments here in detail. The way I regard this matter, and I think that that should be considered when your additional witnesses are brought on here, as I view it this is not purely a contingent situation. I think that Moulton & Powell started out, I don't fully credit this matter that they were only to work upon the test cases, I think Moulton & Powell has received \$2,000 already in cash, and that the balance of their compensation was on a contingent basis, and so I'm awarding this as the additional [189] compensation not contemplated by the parties in the original contract, and that this is additional compensation in addition to what has been received.

Mr. Powell: Thank you.

Mr. Ramsey: Just a moment, your Honor please, have you ruled as yet on the petition for payment of expenses?

The Court: No, I haven't. I don't think you understood me, Mr. Ramsey. I said in view of your attitude I thought I should give you an opportunity

to present your objections; I meant in writing, however you have proceeded to state them, and I wish an opportunity to look over this account which I have just seen today, and I'll announce my decision on that sometime later. The court will adjourn until February 23 at 10 a.m.

Monday, February 27, 1950

The Court: This matter comes up on the petition of the attorneys for compensation in the matter of the United States of America against Clements P. Alberts and others. I believe that this was for the purpose of supplementing the record by the offer of additional proof as to the reasonable value of the services of the attorneys under the theory that the court adopted.

Mr. Powell: Correct, your Honor.

The Court: I think your experts [190] testified on a basis somewhat different than I adopted, as I recall, and you asked the privilege of completing the record by introducing evidence as to the reasonable value of the services on my theory.

Mr. Powell: Correct, your Honor. I might state to your Honor, and this will shorten the matter materially, we have discussed with counsel for the United States the necessity of presenting testimony, and he and we have agreed upon what that testimony might be, and so if I may I would like to read into the record a stipulation that Mr. Ramsey, Mr. Cheadle and I have made. It's a very short stipulation.

The Court: Yes, you may do that.

Mr. Powell: The attorneys, Mr. Cheadle and myself representing the petitioning attorneys and the Priest Rapids Irrigation District, and Mr. Ramsey representing the petitioner United States of America, have stipulated that if I were called as a witness and asked the questions concerning the subject, I would testify that I had worked between a thousand and fifteen hours on the Priest Rapids Irrigation District case—

The Court: A thousand and fifteen hundred.

Mr. Powell: Between a thousand and fifteen hundred hours.

The Court: I think you mis-spoke; I think you said fifteen; you meant fifteen hundred.

Mr. Powell: Thank you;—on the Priest Rapids Irrigation District condemnation case in the years 1944 to 1949 inclusive, and that if he were called to testify Mr. J. K. Cheadle would [191] testify that he had worked on the same case in excess of one thousand hours from October, 1945, through the year 1949; and further it is stipulated that if the witnesses were called V. O. Nicheson and John Gavin each would testify that without regard to any contract, but giving consideration to the necessarily contingent character of compensation for the services, the reasonable value of the services rendered in this condemnation case by petitioning attorneys is approximately \$80,000; and that the witness Harold Shefelman if he were called to testify would testify that without regard to any contract, but giving consideration to the necessarily contingent character of compensation for the services, the rea-

sonable value of the services rendered in this condemnation action by the petitioning attorneys is in excess of \$80,000. It is further stipulated that the record of the hearing in this Court on the petition for the payment of attorneys' fees shall be deemed to contain the above testimony the same as though the witnesses named were present and did so testify.

Mr. Ramsey: The government so stipulates.

The Court: Very well.

Mr. Powell: That's all we have, your Honor.

The Court: I see. All right. Would you care to be heard then in further argument? I'll hear you.

Mr. Powell: I think about all that I need to mention to your Honor and would like to mention in that regard is that in [192] a discussion, and this I haven't advised counsel about except very generally, in a discussion with the attorneys in Washington of the Department of Justice it was brought to my attention that they felt that there was no jurisdiction in this court to entertain a petition of this kind. I think that your Honor's attention might be called to the fact that on the government's petition the original judgment was amended to provide that the money would not be paid into the Superior Court in the liquidation case, but would actually be held here in this court subject to your Honor's order, and for that reason we feel that your Honor has specifically retained jurisdiction of this matter so that this order could be made.

The Court: It runs in my mind too that the Court of Appeals approved that method of pro-

cedure over the very vigorous protests of Chief Judge Denman in his dissent; the majority of the court held it was proper for me to retain control.

Mr. Powell: That's my understanding too, your Honor, and that particular part of the judgment was not appealed from by the government and was therefore affirmed in the affirmance of the judgment.

The Court: It seems to me that this proceeding might well be regarded as a petition on your part for me to release a sufficient amount of the funds to pay you.

Mr. Powell: That's [193] correct.

The Court: You could very well come in and say "Well, our clients are ready to pay us seventy-three—or whatever the amount was—thousand dollars"—

Mr. Powell: \$78,000.

The Court: —and the government protests because they say that's too high, and I am obliged, having control of the fund, to determine that point.

Mr. Powell: That's correct, your Honor, that's the position we take in regard to this particular hearing, and your Honor has made a determination, and we are supplementing the record in that regard, and have prepared an order in accordance with your previous ruling in that connection.

(Short Recess.)

The Court: The Court will resume session. I find myself in a position that is a little difficult to express, perhaps. I had thought that the government possibly would pay this attorney fee which I

had allowed. It's a litigant's absolute right, of course, to appeal, and I have no disposition to either prevent or in any way hinder the taking of an appeal from any action which I might take in any case, this or any other. It does seem to me, however, that if these attorneys are to have to go to the Court of Appeals again to establish their right to an attorney fee, whether it's on the basis that this court has no jurisdiction or the fee that I set is too high, or for whatever cause, I think I can at least, while [194] they shouldn't have any additional compensation for appealing, I think it does indicate that their fee was on even more of a contingency basis than I had thought, if it means another trip to the Court of Appeals, so that I'm not going to put it on that basis, I'm going to put it on the basis that the showing that these attorneys, who are reputable and experienced attorneys, Mr. Gavin, Mr. Nicheson and Mr. Shefelman, would testify that the fee even on the basis which the court indicated, that \$80,000 would be a reasonable fee, I'm going to add 10 per cent and make the fee \$55,000.

This may be a little irregular, but I'll do this, if there's no objection to it, I'll defer entry of the order for, say 10 days, and if the \$50,000 is paid within that time I'll not add the 10 per cent, but if it's not paid within ten days then an order may be taken fixing the fee at \$55,000, and I think I should make it clear again that while I'm speaking aloud and taking into consideration these other fac-

tors, that the basis of my fixing that amount, \$55,000, is the testimony of the three experts, the lawyers, and I would fix it on that basis aside from the other consideration. If that's all, then, gentlemen, the court will adjourn until tomorrow morning. Mr. LaFramboise just mentioned here that I probably unconsciously spoke as if this were an ordinary situation where an attorney fee were to be paid; it isn't really to be paid, it's to be withdrawn; what I meant is that if the parties agree to [195] have the money withdrawn in accordance with my previous ruling within ten days, then the \$50,000 will stand, otherwise an order may be taken fixing the fee at \$55,000.

Mr. Powell: May I ask whether we should withhold the presentation of any order for ten days?

The Court: Yes, I think so. I'll put it this way: If the government agrees to the amount of this fee and does take the position that the court has jurisdiction to allow it, then you can present an agreed order for \$50,000. If you're unable to do that, then present an order for \$55,000. Is that clear, then?

Mr. Powell: Yes, thank you.

The Court: The Court will adjourn until tomorrow morning at 10 o'clock.

Friday, March 10, 1950

The Court: Did you have something to present, gentlemen?

Mr. Powell: Yes, your Honor.

The Court: Will it take much time?

Mr. Powell: No, your Honor, just two or three minutes.

The Court: All right, you may proceed then.

Mr. Powell: I have for presentation, if your Honor please, the order for payment of attorney fees in cause number 128-99.

The Court: The ten days have expired now that I indicated [196] I would hold the matter in abeyance?

Mr. Powell: Yes, your Honor. The order makes provision for the withdrawal of funds on the petition in behalf of the irrigation district supported by the resolution, and this last paragraph, the one which starts at the bottom of page 1, provides that withdrawal shall be made for the benefit of the Priest Rapids Irrigation District and paid to the attorneys.

The Court: Do you have any comment to make, Mr. Ramsey? I see you've approved it as to form only.

Mr. Ramsey: Yes, your Honor. Of course the government would like the record to show that the government objects to the allowance of attorney's fees in this case in the sum of \$55,000 or any other sum.

The Court: I assume your approval is merely to the form of the order, not to its substance.

Mr. Ramsey: That's right. At this time the government files written notice of appeal in the case, and moves for stay in the proceeding pending the completion of the appeal, and asks for an order staying the proceeding.

The Court: The Court has signed the order allowing attorney fees of \$55,000 to Mr. Cheadle and Mr. Powell, or Moulton & Powell, and have you any comment to make on the order for stay? I assume they're entitled to a stay.

Mr. Powell: I understand so, your Honor.

The Court: Without bond, since its [197] the United States.

Reporter's Certificate

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the District Court of the United States for the Eastern District of Washington, held on January 5 and 6, February 27 and March 10, 1950, at Yakima, Washington.

That the above and foregoing, consisting of type-written pages numbered 1 to 165 including this page, contains a full, true and correct transcript of the proceedings had therein.

Dated this 28th day of March, 1950.

/s/ STANLEY D. TAYLOR,
Official Court Reporter.

[Title of District Court and Cause.]

CERTIFICATE OF THE CLERK

I, A. A. LaFramboise, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed hereto are the Original

Application for Extension of Time for Filing Record on Appeal,

Order Extending Time for Filing Record on Appeal,

Petition for Payment of Attorneys' Fees,
Exhibits,

Transcript of Proceedings,

Order of March 10, 1950, for Payment of Attorneys' Fees,

Notice of Appeal,

Motion for Stay of Proceedings,

Order for Stay of Proceedings,

Notice of Cross-Appeal,

Bond on Cross-Appeal,

Points and Authorities filed by petitioning defendant,

Designation of Record,

Points on Appeal,

Points on Cross-Appeal,

Modified Judgment,

Petition for Payment of Certificates of Indebtedness,

Order Directing Payment of Certificates of Indebtedness,

on file in the above-entitled cause, and that the same constitutes the record for hearing of the Appeal from the Order of the Court for payment of Attorneys' Fees entered and filed in said Court on the 10th day of March, 1950, in the United States Court of Appeals for the Ninth Circuit as called for by the Stipulation for Designation of Record on Appeal of Appellant and Appellee.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Yakima in said District Court at Yakima in said District, this 1st day of June, 1950.

A. A. LAFRAMBOISE,
Clerk.

[Seal] By /s/ THOMAS GRANGER,
Deputy.

[Endorsed]: No. 12563. United States Court of Appeals for the Ninth Circuit. United States of America vs. Moulton & Powell and J. K. Cheadle, Appellees, and Moulton & Powell and J. K. Cheadle, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Southern Division.

Filed June 2, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the Circuit Court of Appeals
for the Ninth Circuit

No. 12563

UNITED STATES OF AMERICA,

Appellant,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,
a Public Corporation,

Appellee;

PRIEST RAPIDS IRRIGATION DISTRICT,
a Public Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

MOTION

Come Now the parties to this appeal and move the United States Court of Appeals, for the Ninth Circuit, for the entry of an order authorizing and directing that the transcript of record on appeal, consisting of three volumes, in Cause No. 11,704, entitled as above, and now on file in said Court of Appeals, may be used and referred to by the parties to this appeal without the necessity of any

further printing of said record, the same as though it were included as a record on this appeal.

/s/ BERNARD H. RAMSEY,
Special Assistant to the Attorney General, Attorney for United States of America.

MOULTON, POWELL & GESS,
/s/ J. K. CHEADLE,
Attorneys for Priest Rapids Irrigation District, a
Public Corporation.

[Endorsed]: Filed June 12, 1950.

[Title of District Court and Cause.]

STIPULATION TO INCLUDE PREVIOUSLY
PRINTED RECORD

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the printed transcript of record on appeal in three volumes in Cause No. 11,704, captioned as above and now on file in the United States Court of Appeals for the Ninth Circuit, may be considered and used in this proceeding without the necessity of reprinting the same, the same as though it were filed in this proceeding, this being an appeal from the same cause involving in part the same issues previously presented to the Court of Appeals for the Ninth Circuit.

It is further stipulated that an order may be entered by the Court of Appeals for the Ninth Cir-

cuit approving the stipulation and ordering and directing that the three volumes of the transcript of record on appeal in Cause No. 11,704 in said Court, may be used and referred to by the parties to this appeal without the necessity of printing or designating any part or portion thereof.

/s/ BERNARD H. RAMSEY,
Special Assistant to the Attorney General, Attorney for United States of America.

MOULTON, POWELL & GESS,

/s/ J. K. CHEADLE,
Attorneys for Priest Rapids Irrigation District, a
Public Corporation.

[Title of District Court and Cause.]

ORDER AUTHORIZING CONSIDERATION
OF PREVIOUS RECORD ON APPEAL

This Matter having come on regularly in its order to be heard before the above-entitled Court upon the motion of the parties to this appeal, supported by their stipulation, and the Court of Appeals of the Ninth Circuit having considered the designation of record on appeal in this cause, the stipulation, motion and the transcript of record on appeal in Cause No. 11,704 in this Court, and being duly advised,

Now, Therefore, It Is Hereby Ordered that the transcript of record on appeal consisting of three

volumes of printed record in Cause No. 11,704, in this Court, entitled "United States of America, Appellant, vs. Priest Rapids Irrigation District, a public corporation, Appellee; Priest Rapids Irrigation District, a public corporation, Appellant, vs. United States of America, Appellee," shall be considered as a portion of the transcript of record on appeal in this cause and on this appeal the same as though it were specifically designated on this appeal, and

It Is Further Ordered that the parties to this appeal may refer to the transcript of record on appeal in Cause No. 11,704, consisting of the three printed volumes thereof, by referring to the same throughout the record and briefs as record in Cause No. 11,704, reference being as follows: R. 11,704, page"

So Ordered:

/s/ WILLIAM DENMAN,
Chief Judge.

/s/ CLIFTON MATHEWS,

/s/ WILLIAM L. HEALY,
United States Circuit Judge.

[Endorsed]: Filed June 12, 1950.

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF RECORD

The United States of America, appellant in the above-entitled cause, designates the following portions of the record as filed and certified to be printed in their entirety:

1. Petition for payment of attorney fees with attached exhibit.
2. All exhibits introduced and received in evidence.
3. Transcript of all proceedings on January 5 and January 6, 1950; February 27, 1950, and March 10, 1950, which will include argument taken by the reporter.
4. Order of March 10, 1950, also notice of appeal, motion and order for stay of proceedings, notice of cross-appeal and bond on cross-appeal.
5. Points and authorities filed by petitioner and defendant on original hearing on petition for payment of attorney fees.
6. Designation of record.
7. Points on appeal and cross-appeal.
8. Modified judgment of November 21, 1949, to conform to Circuit Court of Appeals opinion.
9. Petition for payment of certificates of indebtedness.

10. Order directing payment of certificates of indebtedness.

Dated this 19th day of June, 1950.

/s/ A. DEVITT VANECH,
Assistant Attorney General.

/s/ JOHN F. COTTER,
Attorney, Department of
Justice, Washington, D. C.

/s/ BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

[Endorsed]: Filed June 21, 1950.

[Title of District Court and Cause.]

CROSS-APPELLANTS' DESIGNATION OF RECORD

Moulton & Powell and J. K. Cheadle, cross-appellants in the above-entitled case, designate the following portions of the record, as filed and certified, to be printed in their entirety:

1. Petition for payment of attorney fees with attached exhibit.
2. All exhibits introduced and received in evidence.
3. Transcript of all proceedings on January 5 and January 6, 1950; February 27, 1950, and March

10, 1950, which will include argument taken by the reporter.

4. Order of March 10, 1950, also notice of appeal, motion and order for stay of proceedings, notice of cross-appeal and bond on cross-appeal.
5. Points and authorities filed by petitioner and defendant on original hearing on petition for payment of attorney fees.
6. Designation of record.
7. Points on appeal and cross-appeal.
8. Modified judgment of November 21, 1949, to conform to Circuit Court of Appeals opinion.
9. Petition for payment of certificates of indebtedness.
10. Order directing payment of certificates of indebtedness.

Dated this 23rd day of June, 1950.

/s/ J. K. CHEADLE,

MOULTON & POWELL and
J. K. CHEADLE.

[Endorsed]: Filed June 26, 1950.